INDEX

Supreme Court of the United States

OCTOBER TERM, 1968

No. 900

THE DETROIT AND TOLEDO SHORE LINE RAILROAD COMPANY, *Petitioner,*

v.

UNITED TRANSPORTATION UNION, *et al., Respondents.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

APPENDIX

RELEVANT DOCKET ENTRIES

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Date 1967	
July 19	*Certified record* (1 vol. pleadings and transcript), filed; and cause docketed
" 31	Statement of Appellant as to contents of appendix
Aug. 7	Amendment to statement of Appellant as to contents of appendix
Sep. 11	Twenty copies of Brief for Appellant
" 11	Twenty copies of Appendix to Brief for Appellant
Dec. 15	Twenty copies Brief for Appellee
" 15	Twenty copies of Appendix to Appellee's Brief

Docket Entries

Date 1968	
Feb. 12	Twenty copies Reply Brief for Appellant
" 12	Twenty copies Opinion of District Court for Northern District of Illinois in Illinois Central Railroad Co. vs. Brotherhood of Railroad Trainmen
" 12	Twenty copies Opinion in National Railroad Adjustment Board Award No. 7511, First Division
June 10	Cause argued and submitted (Before: McCree, Combs and Cecil, JJ.) Q-232
Aug. 1	Four copies opinion of Seventh Circuit in Illinois Central Railroad vs. Brotherhood of Railroad Trainmen (Copies mailed to Court)
" 16	Letter from counsel for Appellees in response to letter transmitting above opinion of Seventh Circuit (Distributed copies to Court)
" 29	Four copies of letter from counsel for Appellees citing additional authorities and copy of Opinion of Fifth Circuit in United Industrial Workers of Seafarers, etc. v. Board of Trustees of Galveston Wharves, et al. (Copies distributed to the Court)
Sep. 3	Letter from counsel for Appellant in reply to letter from counsel for Appellees with reference to Seafarers decisions (Copies distributed to the Court)
Oct. 7	Judgment of the District Court affirmed Q-394
" 7	Opinion by Combs, J. 4 pp.
" 16	Appellee's affidavit of costs
" 24	Request of Appellant for preparation of record for certiorari petition

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

Date	Proceedings
9-23-66	Complaint filed.
9-23-66	Motion for Preliminary Injunction and Notice of Hearing on 9-26-66 at 9:00 A.M. filed.
9-26-66	Minutes of proceedings filed. DJY. Motion for a preliminary injunction continued until 9:00 A.M. on 10-6-66, if possible hearing to be had on permanent injunction.
10-6-66	Minutes of proceedings filed. DJY. Trial to Court begun, in progress, adjourned until tomorrow morning at 9:00 A.M.
10-6-66	Answer and counterclaim of defendants Brotherhood of Locomotive Firemen and Enginemen, H. E. Gilbert and E. F. Gensler filed.
10-7-66	Minutes of proceedings filed. DJY. Trial resumed, in progress, concluded. Defendant's to submit findings of fact and conclusions of law within 10 days; plaintiff has 10 days thereafter to submit exceptions or additions, plaintiff's request for temporary and permanent injunction denied.
10-7-66	Plaintiff's exhibits 1 through 19 inclusive filed.
10-7-66	Defendant's exhibits A through O inclusive, AA through ZZ inclusive and A-A-A and B-B-B filed.
11-1-66	Findings of fact and conclusions of law filed.
11-15-66	Judgment and Decree filed. DJY. Plaintiff shall not have any relief and its complaint is dismissed on the merits as to all defendants. Plaintiff and employees enjoined from establishing or operating certain terminal points as recited in the judgment.
11-23-66	Motion for New Trial by plaintiff filed.

Date	Proceedings
5-12-67	Opinion of the Court filed.
5-12-67	Order denying motion for an order vacating the judgment of this Court 11-16-66 and for a new trial filed. DJY.
6-9-67	Notice of Appeal by Plaintiff filed.

COMPLAINT FOR INJUNCTION

(Filed September 23, 1966)

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO, WESTERN DIVISION

No. C-66-207

THE DETROIT AND TOLEDO SHORE LINE RAILROAD COMPANY, a corporation, 131 West Lafayette Avenue, Detroit, Michigan, *Plaintiff*,

v.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, a voluntary unincorporated association, 318 Keith Building, Cleveland, Ohio; BROTHERHOOD OF RAILROAD TRAINMEN, a voluntary unincorporated association, Standard Building, Cleveland, Ohio; H. E. GILBERT, individually and as President of the Brotherhood of Locomotive Firemen and Enginemen, 318 Keith Building, Cleveland, Ohio; CHARLES LUNA, individually and as President of the Brotherhood of Railroad Trainmen, Standard Building, Cleveland, Ohio; E. F. GENSLER, individually and as General Chairman of Lodge No. 490 of the Brotherhood of Locomotive Firemen and Enginemen, 3713 Upton Avenue, Toledo, Ohio, and WILLIAM UPHAM, individually and as General Chairman of Lodge No. 512 of the Brotherhood of Railroad Trainmen, 2528 Luddington Drive, Toledo, Ohio, *Defendants*.

1. This is an action for injunction to restrain and enjoin the calling and carrying out of a wrongful and unlawful strike and work stoppage by defendants and those acting in concert with them on plaintiff's railroad in violation of the Railway Labor Act. The wrongful acts and threatened strike as hereinafter described are designed to interrupt commerce and to wrongfully interfere with a management prerogative in the operation of plaintiff's railroad.

2. The jurisdiction of this Court is invoked under the Judicial Code (28 U.S.C. §§ 1331 and 1337), the Interstate

Commerce Act (49 U.S.C. §§ 1 seq.), and the Railway Labor Act (45 U.S.C. §§ 151 seq.).

3. Plaintiff is a Michigan corporation with its principal office in Detroit, Michigan and a common carrier of freight in interstate commerce. Plaintiff operates its trains over its line of railroad between Lang Yard in Toledo, Ohio and Detroit, Michigan, and over the lines of other railroads to other points in the State of Michigan. (Plaintiff is sometimes hereinafter referred to as the "Shore Line").

4. Defendant Brotherhood of Locomotive Firemen and Enginemen (sometimes hereinafter referred to as the "Firemen") is a voluntary unincorporated association and labor organization which represents, for the purposes of the Railway Labor Act, the crafts or classes of enginemen and firemen employed by plaintiff. It has its principal office and place of business in Cleveland, Ohio and consists of a grand lodge and subordinate local lodges, including local No. 490, whose members are employed by plaintiff. Defendant H. E. Gilbert is President of the Firemen and he is sued in his own right and as an officer thereof. Defendant E. F. Gensler is General Chairman of Local Lodge No. 490 of the Firemen on the Shore Line. He is sued in his own right and as an officer of Local Lodge No. 490 and as the representative of the members of Local Lodge No. 490 employed by plaintiff who are so numerous as to make it impracticable to bring them all before this Court. Defendant Brotherhood of Railroad Trainmen (sometimes hereinafter referred to as the "Trainmen") is a voluntary unincorporated association and labor organization which represents, for the purposes of the Railway Labor Act, the crafts or classes of trainmen and yardmen employed by plaintiff. It has its principal office and place of business in Cleveland, Ohio, and consists of a grand lodge and subordinate local lodges, including Local Lodge No. 512, whose members are employed by plaintiff. Defendant Charles Luna is President of the Trainmen and he is sued in his own right and as an officer thereof. Defendant William Upham is General Chairman of Local Lodge No. 512 of the Trainmen on the Shore Line. He is sued in his own right and as an officer of Local Lodge No. 512 and as the representative of the members of Local Lodge No. 512 employed by plaintiff who are so numerous as to

make it impracticable to bring them all before this Court.

5. Plaintiff will begin switching service for the Monsanto Chemical Company plant at Trenton, Michigan on October 1, 1966 under an agreement whereby the Shore Line and the New York Central System alternately serve this plant for a period of one year. In order to realize more efficient and economic operations in service, due to the increase of traffic expected, plaintiff established a new and additional assignment for a local train by Bulletin posted September 19, 1966, effective September 26, 1966, with Trenton (Edison Station) being the terminal point for crews going on and off duty. When last serving this plant in 1965, plaintiff operated a local train under a Bulletin posted December 20, 1962, with DeaRoad, Michigan being the terminal point for crews going on and off duty. The Edison Station at Trenton is located 32.70 miles north of Lang Yard and 11.35 miles south of DeaRoad.

6. On September 20, 1966 defendant E. F. Gensler on behalf of the Firemen threatened plaintiff with a strike beginning September 26, 1966, unless plaintiff cancelled said September 19, 1966 Bulletin.

7. Plaintiff says that it has the unilateral right to establish a new assignment and terminal at Trenton, Michigan, there being no contractual limitations in its collective bargaining agreements with the Firemen and Trainmen.

8. The issue of plaintiff's legal right to unilaterally establish outlying terminals was the subject of a dispute between plaintiff and the Firemen following the posting of a September 24, 1963 Bulletin which established DeaRoad, Michigan as a terminal for a work train. After the dispute was progressed to the highest designated officer of plaintiff, as required by Section 3(i) of the Railway Labor Act, it was submitted to Special Board of Adjustment No. 375 on the Shore Line and, on November 30, 1965, in Award 21, the neutral member ruled that plaintiff had the unilateral right to establish assignments in outlying terminals away from Lang Yard. The arbitrator found that "there is nothing in the rules of agreement which precludes this carrier from establishing an outside assignment." If the Firemen desired to dispute the plaintiff's right to establish a terminal at Trenton by said September 19, 1966 Bulletin, notwithstanding the precedent established in Award 21, then their

proper remedy was a submission to plaintiff of a claim pursuant to Section 3( ) of the Railway Labor Act and, if and when such claim were declined by the highest designated officer of plaintiff, they could have submitted it to the National Railroad Adjustment Board.

9. Under date of January 27, 1966 the Firemen served a notice under Section 6 of the Railway Labor Act requesting a rule change to the effect that all assignments would originate and terminate at Lang Yard. The proposed rule was rejected by plaintiff during a conference between the parties on February 2, 1966 for the reason that the establishment of outlying terminals was a matter within management's prerogative as held in said Award 21. On May 31, 1966 defendant H. E. Gilbert invoked the services of the National Mediation Board in connection with this dispute and said Board proffered its services on June 1, 1966. Following a formal application by the Firemen, said Board assigned case No. A-7839 to the dispute and advised the parties under date of June 28, 1966 that a mediator would be assigned to mediate the dispute. No mediator has been assigned and the procedures set forth in Section 5 of the Railway Labor Act have not been followed or concluded. By virtue of their failure to exhaust the procedures of the Railway Labor Act, the Firemen are not free to strike, and plaintiff has the legal right to conduct its transportation operations free of any strikes and work stoppages.

10. With reference to the current dispute with the Trainmen, as opposed to the Firemen, representatives of the Trainmen, including defendant William Upham, conferred with a representative of plaintiff on December 16, 1965, over a Section 6 notice dated January 6, 1965, which is unrelated to this dispute, although at the conclusion of this meeting the Trainmen submitted a proposed memorandum of agreement covering the establishment of a terminal at Trenton. The General Manager of plaintiff rejected this proposal under date of January 6, 1966 for the reason that there were no restrictive rules in the collective bargaining agreement which prohibited management from establishing an outlying terminal point and for the further reason that the proposed memorandum of agreement as submitted was too restrictive and contained monetary arbitraries which would make the

cost prohibitive. The Trainmen did not progress this dispute with the National Railroad Adjustment Board under Section 3(i) of the Railway Labor Act in accordance with their rights, the question being whether the proposed memorandum of agreement submitted December 16, 1965 was a bargainable issue or within management's prerogative, but on September 16, 1966, during a conference between representatives of plaintiff and the Trainmen, a representative of the Trainmen made statements susceptible of a construction that the Trainmen would strike if plaintiff issued said September 19, 1966 Bulletin. On September 23, 1966 plaintiff submitted this dispute ex parte to the First Division of the National Railroad Adjustment Board pursuant to Section 3(i) of the Railway Labor Act which is vested with exclusive jurisdiction. The Trainmen have not served a notice of any intended change in agreements upon plaintiff under Section 6 of the Railway Labor Act with regard to this dispute over the proposed memorandum of agreement submitted December 16, 1965. By virtue of their failure to follow the provisions of the Railway Labor Act, the Trainmen are not free to strike, and plaintiff has the legal right to conduct its transportation operations free of any strikes and work stoppages.

11. Although plaintiff rejected the memorandum of agreement submitted by the Trainmen on December 16, 1965 and the proposed rule submitted by the Firemen on January 27, 1966, the General Manager of the Shore Line has nevertheless made every reasonable effort to settle these disputes without success. In this connection, on January 24, 1966, plaintiff extended an invitation to representatives of all of the operating unions to participate in an inspection of the proposed welfare facilities at Trenton. A meeting was held on February 3, 1966 and attended by representatives of the Firemen and Trainmen (representatives of the Order of Railway Conductors and Brakemen on the Shore Line did not attend and have not engaged in any dispute with plaintiff on this issue). On the following day, the General Manager of plaintiff wrote to these representatives enclosing a copy of a blueprint for the proposed facilities and requesting their advice as to whether or not they wished any changes made. On June 7, 1966 the General Manager of plaintiff

again wrote to representatives of the operating unions and advised them that the Shore Line was proceeding with the construction of facilities at Trenton and that it intended to establish new and additional road assignments with the terminal at that point no later than October 1, 1966. A building has since been constructed opposite the Edison Station for welfare and bunkroom facilities for crews going on and off duty at that terminal.

12. Plaintiff is and has at all times been ready, willing and able to handle disputes with the Firemen and Trainmen according to agreements between them and the procedures of the Railway Labor Act, and has complied with all procedures and obligations incumbent upon it. Plaintiff has no adequate remedy at law.

13. The uninterrupted services of plaintiff's employees represented by defendants are essential to the operation of plaintiff's railroad. The threatened strike will cause plaintiff many thousands of dollars of damage daily and the diversion of substantial traffic with consequent loss of revenue. The threatened strike will cause plaintiff to lay off other employees, who are not involved in any dispute with plaintiff or represented by defendants, and will cause substantial and irreparable damage to plaintiff, to industries and connecting carriers, their employees and customers, and to the general public.

14. The granting of the relief sought herein will cause but slight injury, if any, to defendants, as compared with the substantial injury which will be caused by the threatened strike to plaintiff, to industries and connecting carriers, their employees and customers, and to the general public.

WHEREFORE, plaintiff prays the Court for a preliminary injunction to be made permanent on final hearing:

enjoining defendants and all persons acting in concert with them from calling and carrying out a strike and work stoppage on plaintiff's railroad; and

directing the defendants forthwith to take all steps within their power to prevent the commencement or the continuation of a strike and work stoppage.

Dated September 23, 1966 at Toledo, Ohio.

/s/ JOHN M. CURPHEY,
/s/ ROBISON, CURPHEY & O'CONNELL,
425 L-O-F Building
Toledo, Ohio
Ch-1-2237
Attorneys for Plaintiff.

STATE OF OHIO,
County of Lucas ss.

C. J. McPhail, being first duly sworn, says that he is the General Manager of The Detroit and Toledo Shore Line Railroad Company, that he has read the foregoing Complaint and that the statements contained therein are true and correct.

/s/ C. J. MCPHAIL.

Sworn to before me and subscribed in my presence this 23rd day of September, 1966.

/s/ JOHN M. CURPHEY.

JOHN M. CURPHEY, Attorney at Law.
Notary Public, State of Ohio.
My commission has no expiration date.

Section 147.03 R. C.

ANSWER OF DEFENDANTS BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, H. E. GILBERT, AND E. F. GENSLER.

(Filed October 6, 1966)

[Title omitted in printing.]

Now come the defendants Brotherhood of Locomotive Firemen and Enginemen, H. E. Gilbert and E. F. Gensler, and for their answer to the complaint of plaintiff state as follows:

First Defense

The complaint fails to state a claim upon which relief can be granted against these defendants.

Second Defense

The Court lacks jurisdiction of the subject matter of the action.

Third Defense

The Court is without jurisdiction to grant injunctive relief herein by virtue of the provisions of the Norris-LaGuardia Act (29 U.S.C., Sec. 101 et seq.).

Fourth Defense

For their answer to the particular allegations of the complaint, these defendants aver and allege as follows:

1. These defendants admit that the action purports to be brought for the purposes alleged in paragraph 1 of the complaint, but otherwise deny each and every allegation contained in said paragraph.

2. These defendants deny the existence of jurisdiction in this Court as invoked in paragraph 2 of the complaint, and allege further that the Court has been deprived of jurisdiction to entertain this action by virtue of the provisions of the Railway Labor Act (45 U.S.C. Sec. 151 et seq.), and the Norris-LaGuardia Act (29 U.S.C., Sec. 101 et seq.).

3. The allegations contained in paragraph 3 of the complaint are admitted.

4. The allegations contained in paragraph 4 of the complaint are admitted.

5. With respect to the allegations contained in paragraph 5 of the complaint, it is admitted that plaintiff has an agreement to begin switching service for the Monsanto Chemical Company plant at Trenton, Michigan, on October 1, 1966; that plaintiff posted a bulletin on September 19, 1966, as described in said paragraph; and that the Edison Station at Trenton is located as therein described; but these defendants deny each and every other allegation contained in said paragraph 5.

6. These defendants deny the allegations contained in paragraph 6 of the complaint.

7. The answering defendants admit that the plaintiff has the unilateral right to establish a new assignment and terminal at Trenton, Michigan, assuming there are no contractual limitations on the subject contained in the plaintiff's collective bargaining agreements with the Firemen and Trainmen, and provided the establishment of new assignments and terminals is not the subject matter of current collective bargaining efforts, and/or the subject of conciliatory efforts by the National Mediation Board, as herein after set forth in the counterclaim filed herein.

8. With respect to the allegations contained in paragraph 8 of the complaint, the right of the plaintiff to unilaterally establish an outlying home terminal or an outlying assignment was not the subject of the dispute between plaintiff and the Firemen following the posting of a September 24, 1963 Bulletin by plaintiff. The Bulletin of September 24, 1963, proposed operating a work train out of Dearoad, Michigan which was an established terminal for hostling and puller jobs only, and the propriety of the plaintiff unilaterally establishing that work assignment out of Dearoad was submitted to Special Board of Adjustment No. 375, and was decided in Award No. 21, as is set forth in said paragraph 8, but except as herein admitted, these defendants deny the allegations of paragraph 8.

Further answering said paragraph 8, these defendants say that plaintiff is currently prohibited by the provisions of the Railway Labor Act from establishing a terminal at Trenton as set forth in the September 19, 1966, Bulletin, by virtue of the pendency of proceedings initiated by this defendant Brotherhood under Section 6 of said Act seeking a change in its agreement with plaintiff whereby plaintiff

would be precluded from establishing such terminal at Trenton, and the requirement of said Section 6 calling for maintenance of the *status quo* by plaintiff carrier until the controversy has been finally acted upon pursuant to Section 5 of the Railway Labor Act; that the services of the National Mediation Board have been invoked in said Section 6 proceeding and the matter docketed by the Board as its Case No. A-7839, and that said case is presently pending awaiting assignment of a mediator by said Board; and that the question of plaintiff's right to put into effect its September 19, 1966, Bulletin is not a matter within the jurisdiction of the National Railroad Adjustment Board.

9. With respect to the allegations contained in paragraph 9 of the complaint, these defendants deny that the establishment of outlying terminals is a matter within management's prerogative and deny that said Award 21 so held, and deny that plaintiff has the legal right to conduct its transportation operations free of any strikes and work stoppages when, as hereinabove set forth, its conduct of such operations includes a violation by it of the mandatory requirements of Section 6 of the Railway Labor Act; but the remaining allegations of said paragraph 9 are admitted.

10. These defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 10 of the complaint, and hence deny the same for want of such knowledge or information.

11. With respect to the allegations contained in paragraph 11 of the complaint, it is admitted that on January 24, 1966, plaintiff extended an invitation to representatives of all of the operating unions to participate in an inspection of the proposed welfare facilities at Trenton; that a meeting was held on February 3, 1966, and attended by representatives of the Firemen and Trainmen; that on the following day, the General Manager of plaintiff wrote to these representatives enclosing a copy of a blueprint for the proposed facilities and requesting their advice as to whether or not they wished any changes made; that on June 10, 1966 (not June 7, as alleged), the General Manager of plaintiff again wrote to representatives of the operating unions and advised them that the Shore Line was proceeding with the construction of facilities at Trenton and that it intended to establish new

and additional road assignments with the terminal at that point no later than October 1, 1966; and that a building has since been constructed opposite the Edison Station for welfare and bunkroom facilities for crews going on and off duty at that terminal but these defendants deny each and every other allegation contained in said paragraph 11.

12. These defendants deny the allegations contained in paragraph 12 of the complaint.

13. These defendants deny the allegations contained in paragraph 13 of the complaint.

14. These defendants deny the allegations contained in paragraph 14 of the complaint.

Fifth Defense

Plaintiff has failed to comply with the *status quo* provisions of Section 6 of the Railway Labor Act in connection with the processing of National Mediation Board Case No. A-7839, as set forth above and in paragraph 9 of the complaint herein, and is precluded by the provisions of the Norris-LaGuardia Act, and particularly Section 8 thereof (29 U.S.C. Sec. 108), from obtaining the relief sought herein or any injunctive relief in the premises.

WHEREFORE, having fully answered plaintiff's complaint for injunction herein, these defendants pray that the same be denied and dismissed, and that they may have their costs herein and such other relief as the Court may deem appropriate.

Counterclaim

For their counterclaim against plaintiff, these defendants allege and aver as follows:

1. These defendants adopt and incorporate as if fully repeated herein all of the affirmative allegations and averments in their foregoing answer to plaintiff's complaint.

2. Plaintiff threatens to and will, unless enjoined by this Court, place into effect immediately its Bulletin of September 19, 1966, establishing a terminal at Trenton, Michigan, as well as additional bulletins which it plans and intends to issue creating additional train assignments at Trenton in connection with its proposed switching service for the Monsanto Chemical Company plant.

3. Said establishment and expansion of a terminal at Trenton, Michigan, by plaintiff would constitute a violation of the requirements of Section 6 of the Railway Labor Act to the effect that rates of pay, rules or working conditions involved in the aforementioned National Mediation Board Case No. A-7839 shall not be altered by the carrier until the controversy has been finally acted upon as required by Section 5 and other Sections of the Railway Labor Act.

4. Said action by plaintiff will cause substantial and irreparable hardship and damage to employees of plaintiff represented by these defendants, for which they have no adequate remedy at law, in that such employees would be required to report for work at a point many miles distant from their homes and their present place of reporting, without additional compensation for time and travel expense, and without the protection of any agreement governing their facilities and welfare at a new and different home terminal, and would further subject them to the hazards and hardships of many miles of highway travel to and from work each day.

WHEREFORE, these defendants pray that the Court enjoin plaintiff, its employees, agents, or representatives, from giving effect to the aforesaid Bulletin of September 19, 1966, and from any other acts or actions effecting or implementing the establishment of a terminal at Trenton, Michigan, until such time as the requirements of the Railway Labor Act for the processing of National Mediation Board Case No. A-7839 have been fully complied with and exhausted.

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Dated October 5, 1966 at Toledo, Ohio

TRANSCRIPT OF TESTIMONY

(October 6, 1966)

[3] **PLAINTIFF'S EVIDENCE**

* * * * *

The COURT: Are you ready to proceed with the introduction of evidence?

Mr. CURPHEY: Yes, your Honor. If your Honor please, we shall call as our first witness Mr. William Upham, for cross examination under Rule 43.

The COURT: Very well. He may come forward and be sworn.

* * * * *

THEREUPON, the Plaintiff called as a witness for cross examination, MR. WILLIAM J. UPHAM, who, having been previously duly sworn by the Clerk, testified as follows:

CROSS EXAMINATION.

By Mr. JOHN M. CURPHEY:

Q. State your full name and address, please.

[4] A. William Joseph Upham, 2528 Luddington, Toledo, Ohio.

Q. You are a defendant in this case, Mr. Upham?

A. I am.

Q. And are you the general chairman of the Brotherhood of Railroad Trainmen on the Shore Line?

A. I am.

Q. How long have you worked for the Shore Line?

A. Since February 29, 1952.

Q. What is your present assignment, if any?

A. Yard helper.

Q. You work off the extra board a lot, do you?

A. No, very seldom.

Q. How long have you been general chairman?

A. Since about November of 1964, I think it was.

Q. Did you hold any office in the organization prior thereto, Mr. Upham?

A. Yes. At one time I was chairman for a year, and then I held the vice chairman's office prior to being chairman.

Q. When was it that you were chairman for a year, prior to your present office?

A. In 1955 and 1956.

Q. Prior thereto you say you were vice chairman for one year, is that true?

[5] A. No; in 1964 I was vice chairman.

Q. What is your present intent as general chairman with respect to a strike if the Shore Line posts a bulletin like the September 19, 1966, bulletin?

A. Well, my intent would be follow the steps that are provided for us by law.

Q. Well, specifically, what do you intend to do?

A. In what respects? I mean, what do I intend to do what?

Q. Do you intend to strike or not to strike?

A. I intend to negotiate an agreement, but if that can't be done, then I would, then I would have a strike if at all possible.

Mr. CURPHEY: If your Honor please, I should like to ask the Court to instruct the witness to answer the last question put to him.

Mr. LYMAN: He has answered the question.

Mr. CURPHEY: I don't think he has. I think he has evaded it.

The COURT: I think he has answered the question. He said he intends to negotiate if he can, and if he can't negotiate an agreement he will strike if it is possible to strike. I don't know what other answer [6] he could give.

Q. (By Mr. Curphey—Continuing) Now, Lang Yards is the home terminal of the Shore Line, isn't it?

A. Yes.

Q. And also there is a terminal at DeRoad, is there not, Mr. Upham?

A. There is at this time one at DeRoad, but it is under dispute whether it is the home terminal or not.

Q. Well, there is a terminal at DeRoad?

A. Yes.

Q. This terminal was established on December 20, 1962, is that true?

A. I believe that is true, yes, sir.

Q. Now, Trenton is north of Lang Yard, is that correct?

A. That is correct.

Q. About how far is it?

A. Somewhere around 35, 37 miles.

Q. And DeRoad in turn is north of Trenton by approximately eleven miles, is that right?

A. Approximately.

Q. Have you worked any assignments at DeRoad?

A. Yes, I have.

Q. You mentioned in response to one of my previous questions that [7] that matter of DeRoad is presently in dispute, is that right?

A. I did.

Q. Following the establishment of that terminal at DeRoad the Shore Line initiated a taxicab service, is that true?

A. That's true.

Q. And crews that reported to work at DeRoad were moved by taxicab south to Trenton; is that how it worked out in practice, Mr. Upham?

A. That's right.

Q. They went on duty at DeRoad, is that correct?

A. That is correct.

Q. And then the railroad moved the crew by taxicab down to Trenton, correct?

A. That is correct.

Q. And then when the men got off duty after working at Trenton they went back by taxicab to DeRoad, is that correct?

A. Yes.

Q. And they reported off duty at DeRoad?

A. Correct.

Q. And that matter is in dispute, is that true?

A. That's correct.

Q. You in fact served a Section 6 notice on January 6, 1965, [8] protesting that taxicab service, did you not?

A. I did.

Q. And that dispute is currently in mediation, true?

A. True.

Q. You object to the taxicab service in a general way?

A. Yes.

Q. And that is the purpose of your Section 6 notice?

A. On the conditions covering the whole situation.

Q. Very well. Now, with regard to this assignment at DeRoad the Trainmen for the most part I take it drive their personal automobiles up to DeRoad, is that true?

A. That's correct.

Q. Now, did you have a conference with representatives of the plaintiff on behalf of the Trainmen with regard to pending disputes in the latter part of 1965?

A. I might have; in all probability I did.

Q. More specifically, did you participate in a conference beginning on December 14, 1965?

A. Yes.

Q. And who was present at that conference on behalf of the Trainmen?

A. Vice president Montgomery, vice chairman Ritchie, and then myself.

[9] Q. What is the name of the present vice president of the Trainmen?

A. The one assigned to our property at the present time?

Q. Yes.

A. James Burke.

Q. Mr. Montgomery is no longer assigned to the property, I take it?

A. That is correct.

Q. Who was present at this conference on behalf of the railroad?

A. Mr. Donald Vane, the labor relations officer.

Q. Where was this conference held?

A. In the offices of the Shore Line Railroad Company in Detroit, Michigan.

Q. I take it there were several matters for discussion during the course of that conference, is that true?

A. That's true.

Q. There had been formal notice given as to those matters?

A. That's true.

Q. Did you have a regular agenda you followed?

A. Yes.

Q. And this conference took place over a period of three days beginning on the 14th, did it not?

[10] A. That's correct.

Q. Do you recall now how many different disputes concerning Section 6 notices you had under discussion at that conference, Mr. Upham?

A. No.

Q. Well, this taxicab matter was one of the matters up for discussion, was it not?

A. It was.

Q. Now, toward the conclusion of the second day of this conference did you inquire of Mr. Vane if he would be willing to discuss the establishment of a terminal at Trenton during the conference?

A. Yes.

Q. And he indicated that he would be willing to do so, did he not?

A. He did.

Q. And there had not been given any formal notice prior to that on this subject, had there?

A. The formal notice was given for the taxicab Section 6 notice, and during the discussion of this taxicab matter the subject was brought up as to establishing a terminal at Trenton, Michigan.

Q. I appreciate what you say, but my question is, there wasn't [11] any formal notice of a conference with regard to this particular subject of the establishment of a terminal at Trenton, was there?

A. No.

Q. It was not in fact on the agenda before the meeting, was it, sir?

A. No.

Q. And that, of course, is why you asked Mr. Vane if he would be willing to discuss it, is that right?

A. No.

Q. Well, you did ask Mr. Vane if he would be willing to discuss the matter, didn't you?

A. Yes, I did.

Q. And he indicated that he would be willing to discuss the matter, didn't he?

A. That's true.

Q. And then on the following day you submitted to him a proposed memorandum of agreement covering the establishment of a terminal at Trenton, is that correct?

A. That's correct.

Q. Was there any letter of transmittal that accompanied this memorandum?

A. No.

[12] Q. Was this at the conclusion of the scheduled conference that you submitted the memorandum?

A. It was the last item that we dealt with.

Q. And I suppose you discussed it briefly with Mr. Vane, did you not?

A. We did.

Q. After which the meeting was adjourned, is that true?

A. That's true.

Q. Now, when submitting this memorandum to Mr. Vane at the close or near the close of your conference on the third day did you make any reference to the joint Section 6 notice of April 28, 1961, or Mediation Case No. 6755?

A. No.

Q. You did not intend at that time, did you, Mr. Upham, to reopen the negotiations as to Mediation Case 6755?

A. No.

Q. Now, this memorandum was rejected as submitted by the general manager of the plaintiff thereafter, wasn't it?

A. Yes.

Q. And that was under date of January 6, 1966? Or do you remember the date?

A. I believe that was the date.

Q. But it was rejected in writing?

[13] A. It was rejected in writing.

Q. Did you acknowledge that rejection of his, do you recall, Mr. Upham?

A. I believe I did.

Q. Did you write him a letter on the subject?

A. I believe I wrote a letter on February 13th something to that effect, where I acknowledged the conference on the taxicab and the proposed memorandum of agreement.

Q. Did the letter you just referred to in your testimony also contain a strike threat?

A. I would have to read the letter before I could answer that, sir.

Q. Well, I am going to show you a letter at this time to refresh your recollection,——

Mr. CURPHEY:—(Continuing) And I might say to opposing counsel that I am not going to mark it now, but I will later and introduce it in evidence,——

Q. (By Mr. Curphey—Continuing)—which purports to be a letter written by you under date of February 13th, Mr. Upham.

Now, with reference to this letter, Mr. Upham, is this the letter you had previous reference to in response to my question?

A. Yes, sir.

[14] Q. Now, in this letter you advised the railroad that it was the intent of your organization to withdraw from service on February 17, 1966, is that true?

A. That's true.

Q. And there were two matters in dispute, one this so-called taxicab matter, and secondly, the proposed memorandum of agreement of December 16, 1965, is that correct?

A. The taxicab is the notice that the proposed memorandum of agreement was bargaining material, and I enclosed it in the letter.

Q. I see. And then it is your testimony that, essentially, this communication had to do with the Section 6 notice of January 6, 1965, with reference to the taxicab dispute, is that correct?

A. That's correct.

Q. And this point-4 referring to the memorandum submitted on December 16th was merely bargaining material in connection with that other dispute?

A. Right.

Q. And subsequent to this, the services of the Mediation Board were invoked, were they not?

A. True.

Q. And there was no strike and the matters continued in the [15] status quo, is that correct?

A. Yes.

Q. Now, of course, in this communication, there is no reference to this old Joint Section 6 notice of April 28, 1961, or Mediation Case No. 6755, is there?

A. No.

Q. Now, when the Board took jurisdiction of this taxicab matter—and I believe they did on that occasion, did they not?

A. I believe they did.

Q. That is Case No. 7711?

A. Right.

Q. They, of course, did not include in that case this point-4, or proposed memorandum of agreement submitted on December 16, 1965, did they?

A. No, they didn't.

Q. There was no Section 6 notice with reference to that, was there?

A. No, not with reference to that.

Q. That was a separate matter, was it not?

A. Yes.

Q. You included that for bargaining purposes, you said, and the procedures have not been exhausted with reference to this particular dispute, or have they?

[16] A. No.

Q. Now, of course, if the Shore Line Railroad did in fact establish this terminal at Trenton that would have quite an effect upon the taxicab dispute, would it not?

A. Yes, it would.

Q. Now, at about this time Mr. McPhail invited you and others to inspect the proposed facilities at Trenton, didn't he, Mr. Upham?

A. Yes; somewhere around February 3rd.

Q. And did you participate in that inspection?

A. Yes, I did.

Q. And you were thereafter asked to make any suggestions you wanted in writing, were you not?

A. Yes.

Q. Did you in fact make any?

A. No, I didn't.

Q. The Shore Line Railroad Company has built those facilities, haven't they?

A. Not the ones they proposed to make.

Q. Oh. There has been a substantial change, is that correct, Mr. Upham?

A. That's correct.

Q. Have you registered any complaint in that respect?

[17] A. No.

Q. The establishment of these facilities was, of course, one of the conditions set forth in your memorandum of December 16, 1965, wasn't it?

A. I believe it was.

Q. Now, you learned thereafter—in the Spring of the year—that the Shore Line Railroad intended to go ahead and establish a terminal at Trenton, did you not?

A. I did.

Q. And when was it that your organization decided that they would strike if and when such a bulletin was posted?

A. Well, the decision, I don't know, but it was later on in the year.

Q. And when was that, approximately?

A. Sometime in December—or September.

Q. But you had some discussions in the summer, didn't you, with the vice president or the Trainmen on this subject?

A. I believe there was a meeting, yes.

Q. And at that meeting it was decided to write a letter asking for a conference on this Mediation Case No. 6755, wasn't it?

A. That's true.

Q. And that letter was in fact written on August 12, 1966,

[18] wasn't it?

A. I believe that is the date of it.

Q. And the railroad, of course, agreed to meet with you, didn't they?

A. Yes.

Q. And that conference was held on September 16th, finally?

A. That's correct.

Mr. CURPHEY: I believe that's all. Thank you, Mr. Upham.

The COURT: You may stand down, Mr. Upham.

Mr. LYMAN: May I have the opportunity to ask a few questions at this time, your Honor, pending our right to recall the witness?

The COURT: Our procedure does not provide for redirect after cross examination under the Rule.

Mr. LYMAN: I see, your Honor.

The COURT: You may reserve your redirect examination until your own case.

Mr. LYMAN: Thank you.

The COURT: You may now call your next witness, Mr. Curphey.

[19] Mr. CURPHEY: Thank you, your Honor.

We will call Mr. McPhail as our next witness, your Honor.

The COURT: He may be called and sworn.

* * * * *

Testimony of Clayton J. McPhail

THEREUPON, the Plaintiff called as a witness, MR. CLAYTON J. MCPHAIL, who, having been previously duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION.

By Mr. JOHN M. CURPHEY:

Q. Will you state your full name and address, please?

A. Clayton J. McPhail, 17130 Kinross, Birmingham, Michigan.

Q. And your position, sir?

A. General Manager.

Q. Of what company?

A. The Detroit & Toledo Shore Line Railroad Company.

Q. You signed the Complaint in this case, did you not, Mr. [20] McPhail?

A. Yes, sir.

Q. Is that a true and correct statement?

A. It is.

Q. Will you describe briefly for the Court here the property of the Shore Line?

A. Generally speaking, the property of the Shore Line Railroad runs approximately fifty miles, beginning at its southernmost point in Toledo, up to DeRoad, Michigan.

We run through trains and local switchers. We have stations along the line. We employ approximately 350 people. Our general offices are located at Detroit, Michigan.

Our principal areas of work—or our principal area of work is concerned with Lang Yard in Toledo.

Q. How many daily trains do you have?

A. The Shore Line Railroad operates four daily through trains, customarily daily trains, and four local switch runs.

We also operate what is commonly known as a "puller" assignment between our Lang Yard in Toledo and the Stanley Yard of the New York Central in Toledo.

Q. In what areas do you have switching operations where you can make up trains?

A. Our switching operations are primarily concerned with four [21] points. Our major one is at Lang Yard in Toledo. We also have switching operations at Monroe, which

is our next station to the north. And, continuing on in a northerly direction, we perform service at Rockwood, Trenton and DeRoad Yard in Detroit, or River Rouge.

Q. Where is the location of the Monsanto plant which you serve, Mr. McPhail?

A. The Monsanto plant is located adjacent to our Edison Yard in Trenton, Michigan.

Q. And will you give us a brief history of your current service of this plant?

A. Well, the Shore Line Railroad has for many years exclusively served the Monsanto Company. However, approximately in 1960 Monsanto served notice upon the Shore Line Railroad that they desired to have an additional carrier serve them, and they expressed the desire to have the New York Central do so.

Accordingly, we negotiated an agreement with the New York Central whereby we would switch the Monsanto Company plant on an every-other-year basis, and that arrangement started in 1961. That has continued and still continues at the present time.

Q. And under that agreement was it this year that you proposed to commence that switching?

[22] A. The New York Central terminated their switching operations at Monsanto at the end of September, and we took over on October 1, 1966.

Q. Are there other customers in the Trenton area served by the Shore Line?

A. Yes, there are, there are three or four.

Q. Could you name them for us, please?

A. Well, Schwewnigan is located at that point, and The Detroit Edison Company is a large shipper and receiver of freight at that point as well as Niemann's Lumber Company. Then, too, Lever Brothers is located at Trenton, and that is approximately the extent of it in the immediate Trenton area adjacent to the Edison Yard.

Q. Now, Mr. McPhail, what brought about last month this immediate dispute with the Trainmen on the Shore Line Railroad Company?

A. The posting of the bulletin dated September 19, 1966, by the carrier.

Q. And what was the subject matter of the dispute?

A. The establishment of a terminal at Trenton.

Q. And were there working conditions involved in this subject matter of dispute?

A. That naturally followed, the conditions under which [23] the employees desired to impose upon the carrier at this point.

Q. Had the Trainmen submitted any proposals to you in that connection?

A. Yes, they did.

Q. And when were these proposals submitted?

A. On December 16, 1965,——

Q. In what form?

A. (Continuing)—when the memorandum of agreement was submitted to us that has already been discussed.

Q. How was this memorandum of agreement treated by you when received?

A. Well, in the only manner we could treat it: as a new dispute.

Q. What was subsequently done?

A. The dispute was referred to the First Division of the National Railroad Adjustment Board, under the advice of counsel.

Q. What was done, if anything, immediately or shortly after the memorandum was submitted to you?

A. Well, the carrier rejected the agreement as submitted, and then of course we took the dispute to the National Railroad Adjustment Board.

Q. And that is its present status, I take it?

A. Yes, sir.

[24] Q. Now, Mr. McPhail, have there been related disputes over this Trenton terminal over the years? Have there?

A. Yes, there have been.

Q. Beginning when?

A. In 1961, when the original notice was served.

Q. And what was contemplated by the Shore Line at that time with respect to this terminal?

A. Well, at that time, in 1961, we were operating four runs, four switch runs out of Lang Yard in Toledo. And of course in 1960 and continuing into 1961 our revenues took a rather drastic drop, and because of the considerable

amount of overtime consumed by these crews in going from Lang Yard in Toledo to their point of principal switching it was decided that we should transfer two assignments to an outlying point, and we intended to do so at Trenton, Michigan.

Q. And, specifically, what were those two assignments, Mr. McPhail?

A. They were 401-402, and 407-408.

Q. Now, did this contemplated change become the subject of a dispute with the operating employees?

A. Yes, it did.

Mr. CURPHEY: If your Honor please, I would like to take a break for the benefit of the Clerk [25] at this time. Perhaps we can expedite these matters if I have him mark all the exhibits I propose to offer at one time. I've got them in order.

The COURT: You want to take a brief recess at this time then?

Mr. CURPHEY: Yes, your Honor, I do. I think a five-minute recess would serve the purpose and be sufficient.

The COURT: Very well. Court will be in recess.

• • • • •

Mr. CURPHEY: If your Honor please, I have another set of the exhibits that I propose to now identify, and I would be glad to give them to your Honor for his ready reference if you would care to have them. It might expedite matters a little further.

There is a little number in the upper right-hand corner of the corresponding numbers that the Clerk has marked on them.

• • • • •

[26] Q. (By Mr. Curphey—Continuing) I hand you, Mr. McPhail, what has been marked Plaintiff's Exhibit 1 and ask you to identify that, please.

A. This is a letter dated April 28, 1961, addressed to myself and constituting a formal Section 6 notice under the provisions of the Railway Labor Act to negotiate an agree-

ment of conditions covered by the contemplated setting up of this tieup point, and it is served jointly by the general chairman of the RC & B, the BR & O, and the BF & E.

Q. Thank you. Were conferences subsequently held pursuant to this notice?

A. Yes, there were.

Q. What were the results of those conferences?

A. Well, the conferences on that specific Section 6 notice were not productive simply because the notice was extremely vague, and the organizations requested additional time to prepare a proposed memorandum of agreement to cover what they referred to as "the contemplated change."

Q. Was this request granted?

A. Yes, it was.

Q. Did you subsequently receive a proposed memorandum of agreement submitted under this Section 6 notice?

A. Yes, I did.

[27] Q. Do you recall whether there was a letter of transmittal accompanying this proposal?

A. Yes, I believe there was.

Q. I will hand you what has been marked Plaintiff's Exhibit 2, Mr. McPhail, and I will ask you to identify that document for us, please.

A. This is a letter dated June 8, 1961, addressed to myself wherein it—which actually constitutes a letter of transmittal and transmits a written proposal in connection with the Section 6 notice.

Q. How was the dispute characterized in that letter of transmittal, Mr. McPhail?

MR. LYMAN: I object to that, your Honor. The letter speaks for itself.

Q. (By Mr. Curphey—Continuing) I hand you what has been marked Plaintiff's Exhibit 3, Mr. McPhail, and would you please identify that for us?

A. This is the proposed memorandum of agreement that accompanied the letter of transmittal. And it, of course referred to the desire to change the present home terminal of these trains, to operate them out of Edison from Lang.

Q. Were there any subsequent proposals submitted by

the operating units, or unions, following your receipt of this [28] exhibit?

A. Not to my knowledge from the organizations.

Q. What subsequently happened then, Mr. McPhail, with regard to this dispute?

A. Well, because of our failure to reach an agreement on this proposal as submitted the conferences on the property were terminated, and subsequently the organizations invoked the services of the National Mediation Board, and this was docketed as Case No. A-6755.

Q. Then what happened?

A. And subsequently it was negotiated, again on the property, with the assistance of one or more mediators.

However, again it was unproductive and did not result in the consummation of an agreement.

Q. Did this take place during the remainder of 1961, for the most part?

A. Yes.

Q. What did the carrier then do, if anything, with regard to the changes contemplated by the notice and the transfer of the two local trains, 401-402 and 407-408?

A. Well, at that particular time we did very little. However, subsequently we changed the operation of the locals. So that two of them were established at DeRoad, which was a closer [29] point to Trenton than was Lang Yard.

Q. Following your unsuccessful conferences on the property, Mr. McPhail, what action did the National Mediation Board take, if any?

A. Well, the National Mediation Board indicated that they could not get the parties to reach an agreement. And, of course, in accordance with the Railway Labor Act, they offered arbitration.

The organizations refused arbitration. And, of course, the carrier took the position that the issue was moot at the time because we did not contemplate any longer the changing of these two assignments from Toledo to Trenton, and we therefore declined to receive a proffer of arbitration.

Q. All right. Now, Mr. McPhail, I hand you what has been marked Plaintiff's Exhibit 4 and ask you to identify that document, please.

A. Exhibit 4 is a letter dated April 3, 1963, addressed to

myself as well as the president of the Brotherhood of Locomotive Firemen & Enginemen, and the president of the Brotherhood of Railroad Trainmen, setting out the Section 6 notice, and in effect—and in its statement stating that the case was closed on April 3, 1963.

Q. Now, subsequent to this letter and the Board closing its [30] file, Mr. McPhail, did you have any conferences with regard to this matter?

A. No, sir, there have been negotiations, no conferences.

Q. Did you have any conferences on the matter last month, Mr. McPhail?

A. Yes, sir.

Q. Did you have subsequent—did you have any conferences subsequent to April 3, 1963, except for the one last month?

A. No, sir, not in the interim period.

Q. Now, during the mediation of this dispute, Mr. McPhail,—and I think that perhaps you touched on this in response to one of my previous questions—will you state whether or not the Shore Line Railroad Company established a terminal at DeRoad for a local train?

A. Yes, we did.

Q. And when was that, if you recall?

A. If I am recalling correctly, it was in 1962.

Q. Would that have been the latter part of——

A. (Interposing) The latter part of 1962, yes, sir.

Q. Was this considered by the parties within the scope of the joint Section 6 notice of April 28, 1961?

Mr. LYMAN: I object to that question, your Honor. He can't speak for all of the parties, [31] as to what the various parties considered something to be.

The COURT: Sustained.

Q. (By Mr. Curphey—Continuing) Was that considered by you, Mr. McPhail, as being within the scope of the joint Section 6 notice of April 28, 1961?

A. No, sir.

Q. Now, what subsequently occurred in connection with this assignment and the service of the Monsanto Company plant at Trenton?

A. Well, as we alternated with the New York Central in serving the Monsanto Company plant, we changed our operations to conform with that switching requirement.

Inasmuch as we were in controversy as to the assignment of crews at Trenton, we assigned crews at DeRoad, and for some time we had the crews using an engine and locomotive together between DeRoad and Trenton.

However, that proved to be somewhat time consuming, and we subsequently went to a taxicab arrangement. That was in the fall or late 1964, and during 1965, while we were at the plant switching Monsanto.

Q. Now, did this taxicab service develop any protest from the Trainmen?

A. Yes, it did.

[32] Q. And was a dispute initiated in due course?

A. Yes, there was.

Q. Is there a pending Section 6 notice with regard to that matter?

A. There is.

Q. What is the status of that?

A. The status of that at the present time is that we are awaiting a mediator.

Q. Now, with reference once again to the joint Section 6 notice of April 28, 1961, and Mediation Case No. 6755 involving the contemplated change of these two trains, were the Firemen a party to those mediation proceedings?

A. They were when the Section 6 notice was served in 1961.

Q. Were they a party to the subsequent mediation proceedings, Mr. McPhail?

A. Yes, sir.

Q. And subsequent to the Board closing its file, as noted, —and what has been identified as Plaintiff's Exhibit 4— what did the Firemen do, if anything, with regard to this matter?

A. Well, the Firemen originally joined in the negotiations as a result of the Section 6 notice. Later on, however, they took the position that there were claims pending because of the establishment of assignments at DeRoad.

[33] They further told us at a later time that they were going to withdraw from the Section 6 notice of 1961, inas-

much as a dispute involving the establishment of trains at DeRoad was going to be a matter to be decided by a Special Board of Adjustment. And they subsequently withdrew from the Section 6 notice and wrote us a letter telling us that they were withdrawing and saying in effect that the decision on those particular cases to be decided by the Special Board of Adjustment would undoubtedly settle the issue as to whether or not the carrier had the right to establish outlying points.

Q. Now, you have referred in your answer to a Special Board of Adjustment, Mr. McPhail.

A. Yes.

Q. Will you explain briefly for the benefit of the Court what that Board is?

A. The Special Board of Adjustment is a board comprised of a carrier member, an organization member, and a neutral member either selected by the parties jointly or assigned by the National Mediation Board.

It functions under the auspices of the National Mediation Board. However, it actually is considered an arm of the Board itself.

Q. What is the number of this Board on the Shore Line as to [34] the Firemen?

A. I can't recall the number of that specific Board.

Q. What was the particular dispute submitted by the Firemen to that Board to which you referred in your prior testimony, Mr. McPhail?

A. The dispute centered around the establishment by the carrier of a work train at DeRoad Yard in Detroit.

Q. Were there any other matters besides this specific matter in dispute with the Firemen over the terminal at the DeRoad Yard?

A. Yes. There were several items that were discussed, several claims that were submitted which eventually could not be resolved on the property, and they were also submitted to this Special Board of Adjustment.

Q. Now, do you recall the date of the particular bulletin which established this work train to which you referred at DeRoad?

A. It was sometime in 1963; I am not sure of the specific date, Mr. Curphey.

Q. Had there been any prior bulletins to this one which established local trains?

A. Yes. We had established trains there around in 1962. However, historically it had gone back for many years before [35] that, but the source of the dispute arose when we established trains there in 1962. But the particular claim itself that was to be handled by the Board was centered around the 1963 period. It might have been September, if I recall correctly.

Q. Now, I hand you what has been marked Plaintiff's Exhibit 5, Mr. McPhail, and I will ask you if you will please identify that exhibit. And in that connection you don't have to read the exhibit in its entirety. Just tell us briefly what it is and its substance.

A. Well, I have already characterized the dispute, and this was the award that was given and it was from Special Board of Adjustment No. 375 in considering Case No. 21.

The award is numbered No. 21, and it sets out the findings, wherein the neutral member of the Board indicated that this particular dispute wasn't a change in the recognized terminal, but simply amounted to an outlying assignment.

Mr. LYMAN: I object to his responding in this way. He is not answering a question, your Honor, but going far beyond it. In addition, the exhibit is here and speaks for itself.

The COURT: Objection sustained.

Q. (By Mr. Curphey—Continuing) Will you state whether or not, Mr. McPhail, Plaintiff's Exhibit 5 is the award of the [36] neutral member, or arbitrator, in that dispute with the Firemen?

A. It is.

Q. And you won the case, didn't you?

A. Yes, sir, fortunately.

Q. And what was the date of this Award No. 21?

A. November 30, 1965,

Q. I hand you—well, you are correct. Now, I hand you what has been marked Plaintiff's Exhibit 6 for purposes of identification. What is this exhibit?

A. This is the proposed memorandum of agreement that was handed to Mr. Vane, the Labor Relations Officer, by

Mr. Upham, which has already been a source of testimony here, and which was handed to him on December 16, 1965, at that conference that was referred to also.

Q. Is this dated?

A. I don't believe it is.

Q. To your knowledge, Mr. McPhail, is there any letter of transmittal that accompanied this proposal?

A. No, there was not.

Q. Will you state whether or not, Mr. McPhail, in connection with Plaintiff's Exhibit 6 any representative of the Trainmen stated to you that this was a part of the joint Section 6 notice of April 28, 1961, and proposed memorandum [37] of agreement submitted on June 8, 1961, and Mediation Case No. 6755?

A. No, sir.

Q. How was this treated by you when received? What did you do, Mr. McPhail?

A. Well, it was treated as a new matter, as a new dispute.

Q. And what happened then?

A. There was a conference on it, to my understanding, with Mr. Vane which was not productive, and subsequently there was a letter of declamation written to Mr. Upham.

Q. Did you write that letter?

A. No.

Q. Did you see it?

A. Yes, sir

Q. I will now ask you if you will identify what has been marked Plaintiff's Exhibit 7, please.

A. Exhibit is the letter dated January 6, 1966, addressed to Mr. Upham as general chairman of the Brotherhood of Railroad Trainmen over my signature.

Q. And what, briefly, is the subject matter of the letter?

Mr. LYMAN: I object, your Honor. It speaks for itself.

The COURT: Sustained.

Q. (By Mr. Curphey—Continuing) What is the current status [38] of the matter, Mr. McPhail?

A. This particular dispute has been docketed with the First Division of the NRAB.

Q. I will hand you what has been marked Plaintiff's Exhibit 8 for identification.

A. This is the submission to the National Railroad Adjustment Board, First Division, the carrier's ex parte submission, submitting the dispute.

Q. What is the date of the submission? I don't think it shows on that copy. Do you remember the date?

A. No, I don't, but it is a recent—within the last few weeks.

Q. Now, following the rejection by you—as submitted—of the proposed memorandum of agreement of December 16, 1965, what next developed with respect to disputes with the Trainmen, Mr. McPhail?

A. To my knowledge there was nothing done after that letter of declamation to the Trainmen until the letter from vice president Burke requesting a conference with respect to Mediation Case No. A-6755.

Q. And that, of course, involved the establishment of a Trenton terminal or related matter with reference to those two work trains?

[39] A. Yes, sir.

Q. Now, was there any dispute with the Trainmen, or related dispute earlier this year—in January or February—as to the taxicab service?

A. Yes. We had then and we currently have a dispute with the Trainmen concerning the taxicab arrangement between DeRoad and Trenton.

Q. Did you receive any strike threat in writing from the Trainmen at about that time?

A. Yes, we did.

Q. Now, I hand you what has been marked Plaintiff's Exhibit 9. Will you please identify that?

A. Exhibit 9 is a letter dated February 13th, addressed to myself from Mr. Upham as general chairman of the trainmen setting forth the four items that he states they are going to use as a basis for withdrawal from service.

Q. And was one of the items stated with reference to the December 16, 1965, memorandum?

A. Yes, sir; that was Item No. 4.

Q. And then what subsequently happened with reference to this dispute?

A. The Trainmen referred that particular dispute to the National Mediation Board, indicating that they were going

to [40] withdraw from service, and the Mediation Board then contacted our line and requested it to make a statement, and of course we did.

Q. In this connection, Mr. McPhail, was there any reference by the Trainmen to the 1961 Section 6 notice in Mediation Case No. 6755?

A. No, sir, there was not.

Q. I hand you what has been marked Plaintiff's Exhibit 10. Will you please identify that?

A. Exhibit 10 is a copy of a telegram addressed to me from the Executive Secretary of the National Mediation Board, informing us that the Trainmen had—that we did not reach agreement with the Trainmen on various notices —of January 6th and December 16th—and asked that we furnish a statement in that connection.

Q. I hand you what has been marked Plaintiff's Exhibit 11, Mr. McPhail, and ask you to identify that particular document, please.

A. This is another wire from the National Mediation Board, received on February 15th, wherein the Board is informing the Shore Line that the notices of—the Trainmen's notice of January 6th and the Trainmen's notice of the 16th was assigned as Case No. 7711, and that they were assigning a mediator.

[41] Q. Was the December 16, 1965, memorandum made a part of this dispute?

A. No, sir, it was not.

Q. Was there any Section 6 notice in connection with that December 16, 1965, memorandum?

A. No, sir.

Q. Has there been any reference, Mr. McPhail, to that December 16, 1965, memorandum in the subsequent correspondence with the Trainmen or with the Board?

A. Yes. The Board indicated that the Trainmen were threatening withdrawal from service not only on the three points contained in their original notice but also including the fourth point, which was the proposed memorandum of agreement.

Q. You are referring, I take it, to the telegram which has been identified as Plaintiff's Exhibit 10?

A. Yes, sir.

Q. Now, subsequent to that, Mr. McPhail, was there any correspondence or written communications?

A. Not to my knowledge. Are you speaking with specific reference to the Section 6 notice?

Q. No. I am referring to the December 16, 1965, memorandum.

A. No, sir.

[42] Q. Now, Mr. McPhail, did you subsequently advise the Trainmen as well as the Firemen of any anticipated establishment of a terminal at Trenton?

A. Yes, we did. Sometime during the summer we had a request from the Monsanto Company to take over the switching operations in their plant because of a situation on the—within their plant initiated by the New York Central people, and we were requested to make preparations for servicing their plant.

We did post a bulletin, however, before establishing the assignments at Trenton. However, before that time—or between that time and the actual time that we were to enter the plant property to perform switching operations they settled their differences with the New York Central, or at least the New York Central got their differences settled with their organizations, and it was therefore not necessary for us to switch at the plant for Monsanto. Monsanto so advised us and we so advised the operating organizations on the Shore Line.

Q. Now, approximately when did that occur, Mr. McPhail, the approximate date?

A. I think it was sometime in June.

Q. Of this year?

A. Of 1966.

[43] Q. Now, I hand you what has been marked Plaintiff's Exhibit 12. Will you please identify that?

A. Exhibit 12 is a letter dated May 31st, over my signature, and it is addressed to vice president Burke of the Trainmen confirming a conference held on May 26th, and it cites various issues and disputes that were discussed and either the action taken or the agreements reached, or just setting forth the status as a result of the conferences.

Q. Earlier this year, Mr. McPhail, did you have occasion to meet with representatives of the defendant organizations

with reference to the establishment of a facility at Trenton, Michigan?

A. I did not personally. However, we did set up a meeting with the organizations about the Trenton situation, about the facilities that we contemplated building there.

Q. Did you have occasion to communicate with the general chairmen of the organizations in that respect?

A. Yes, we did. We informed them of a time and date on which we desired them to inspect the location and to consider the facilities that would be necessary as a minimum to provide for their accommodations.

Q. Did such a meeting take place, if you know?

A. Yes, it did.

[44] Q. Now, Mr. McPhail, did you have occasion subsequently to again communicate with the general chairmen of the various organizations?

A. Yes. I believe that subsequent to that meeting the engineering department had prints made and we sent the prints to the various organizations and asked them whether or not they had any comments, suggestions or alterations to make, and we did not receive a reply.

Q. Did you go ahead with the construction of these facilities, Mr. McPhail?

A. Yes, we did.

Q. What is the present situation in that respect?

A. Well, the present situation is that the building has been erected. I am not sure whether we have all of the inside facilities available, but they should be within the next day or so; that is my understanding, that they are just about completed.

Q. Now, Mr. McPhail, I hand you what has been marked Plaintiff's Exhibit 13 for identification. Will you tell us what that is?

A. Exhibit 13 is a letter dated August 10th from vice president Burke of the Trainmen. It is addressed to me, indicating that he has been assigned to assist Mr. Upham. [45] Then he refers to the organization's Section 6 notice, National Mediation Board Case No. A-6755.

Q. And I will now ask you to identify Plaintiff's Exhibit 14 for identification.

A. Exhibit 14 is a letter dated August 12th, over my sig-

nature, acknowledging to Mr. Burke his letter of August 10th with respect to Case No. A-6755, indicating that we would be agreeable to discussing it.

Q. Would you please identify Plaintiff's Exhibit 15?

A. Exhibit 15 is a copy of a bulletin dated September 19, 1966, over the signature of the Terminal Trainmaster, which in effect provides for the establishment of two assignments, at Edison Yard, at Trenton—excuse me, one assignment.

Q. Now, subsequent to Award No. 21 in your favor on November 30, 1965, did a subsequent dispute arise with the Firemen as to that subject matter?

A. Would you please restate the question.

Q. I will withdraw it and rephrase it. Subsequent to Award No. 21 in your favor on November 30, 1965, Mr. McPhail, did a dispute arise with that general—on that general subject matter with the Firemen?

A. Yes. There was a dispute which arose as an outcome of the award.

[46] Q. Will you state whether or not you subsequently received a Section 6 notice from the Firemen?

A. Yes, we did. We received a Section 6 notice from the Firemen's organization, which in effect requested that all trains operate in and out of Lang Yard in Toledo.

Q. Now, will you please identify for us what has been marked Plaintiff's Exhibit 16?

A. Exhibit 16 is a letter dated January 27th. It is addressed to me from Mr. Rancich, general chairman of the Firemen's organization, which sets out the Section 6 notice, and indicates the request they are making with respect to the assignment of crews at Lang Yard.

Q. And please identify Plaintiff's Exhibit 17.

A. Exhibit 17 is a letter dated June 28th from the executive secretary of the National Mediation Board. It is addressed to myself and to the president of the Firemen's organization, acknowledging the application has been made for mediation and assigning the application as Docket Case No. A-7839, indicating that a mediator would be assigned.

Q. What is the present status of this matter?

A. We are still waiting—or are still awaiting the assignment of a mediator.

Q. Now, Mr. McPhail, will you explain briefly how oper-

ating [47] conditions have in fact changed with respect to the Trenton area since 1961?

A. Well, of course, in 1961 we were serving the Monsanto Company plant as well as other industries in that area and performing switching in the Edison Yard in Trenton, but with the trains originating and terminating in Lang Yard.

Subsequent to 1961, however,—and I have already indicated that Monsanto desired to have two carriers switch there. So that that actually characterized a change in our operations. So that we did fluctuate from the assignment of local trains, anywhere from three, four or five trains, as the traffic requirements and switching requirements permitted.

At the present time, of course, beginning this October, we have the requirement for switching in Monsanto on an annual basis; and, considering that we had two assignments at Lang and two at DeRoad, we assigned an additional new assignment at DeRoad to handle the Monsanto arrangement, the Monsanto Company plant arrangement.

Q. Let me interrupt you there, Mr. McPhail. In your last sentence you said that you established a new assignment at DeRoad.

Isn't it correct that you established a new assignment [48] in Trenton last month rather than at DeRoad?

A. Well, we did establish the new assignment at Trenton and it worked for one day. Then we, of course, reached the status quo and we took the bulletin down.

Of course, the change that we have in the future is going to be reflected by the request of the McLouth Steel Corporation to build a track into their North Trenton plant, which will involve the assignment of additional crews for that particular place.

In other words, what I am trying to say is that the situation at Trenton has changed since 1961. It continues to change, and that area is going to be the area of greatest growth on our line. It is characterized as the "Down-river Area," where industry is building, and there is tremendous activity in that area.

Mr. LYMAN: Your Honor, I move that that last statement of the witness be stricken as not responsive.

Mr. CURPHEY: I think it is responsive, your Honor.

The COURT: The objection will be overruled.

Q. (By Mr. Curphey—Continuing) Mr. McPhail, will [49] you please state briefly what injury, if any, the Shore Line Railroad Company will sustain if the threatened strike is carried out?

Mr. LYMAN: If I might address the Court for just a moment.

I feel that although we have denied the allegations of irreparable injury and monumental expense, and so forth, for the purpose of this case, to avoid dragging it out, we stipulate that there would be sufficient irreparable injury from the strike to support the equity requirements.

Mr. CURPHEY: That statement is sufficient for me, your Honor.

The COURT: Very well. Then you may proceed.

Q. (By Mr. Curphey—Continuing) Will you please state briefly, Mr. McPhail, how the public interest would be affected, if at all, by the carrying out of the threatened strike?

A. Well, certainly in the public interest we have the industries on our line that we serve exclusively that would be affected. And, of course, we are a part and party and as a matter of fact a supply line for the automobile industry, [50] particularly General Motors, and certainly once we start manipulating that supply line the automobile industry is in serious trouble.

Mr. CURPHEY: You may inquire, Mr. Lyman.

* * * * *

CROSS EXAMINATION.

By Mr. R. R. LYMAN:

Q. Mr. McPhail, at the time you received the December 16, 1965, proposal—or Mr. Vane received it—was there any action that was pending on the part of the railroad to reinstate or to open a new terminal at Trenton or to establish Trenton as a terminal?

A. The notice was December 16, 1965, you say?

Q. Yes.

A. At that time there was no intention of so doing; at

least there was not any open effort on our part. We had been desirous of establishing facilities at Trenton. I presume that you are differentiating between our initiating something, a bulletin?

[51] Q. Yes.

A. There was no bulletin on our part, or actual effort to push our way into Trenton.

Q. You have not sent out any communications with such intention?

A. No; we have not since 1963.

Q. In other words, between the time the Mediation Board notified the parties of the failure of its efforts and finally terminated mediation and closed its files on Case No. A-6755 to and beyond December 16, 1965, there had been no further move on your part in the direction of Trenton as the terminal?

A. I don't believe so. I am only trying to get the dates clear in my mind.

Q. Well, the closing of the files on the part of the Mediation Board was April 3, 1963, I believe.

A. Do you mind if I refer to some dates?

Q. No. You may check them.

A. No, not to my knowledge, because after 1963 we went to DeRoad, and we operated with a train and engine crew, and then we went to the taxicab arrangement. So I am fairly sure there wasn't anything initiated by us.

Q. Now, Mr. McPhail, I believe you testified that you [52] declined arbitration at the termination of Case No. A-6755, and in so doing advised the Board and the other parties that you felt that the matter was moot, and that you no longer intended to go to Trenton, is that correct?

A. Yes, sir.

Q. Now, this December 16th proposal was handed to Mr. Vane in connection with the discussion of an unrelated dispute, I believe you said in your Complaint, which would be the taxicab problem, is that correct?

A. Yes. Yes. I think there were other proposals, including the taxicab arrangement. I think there was an actual docket of issues to be discussed.

Q. Could we describe the taxicab matter as the one being currently involved in A-7711?

A. Yes, sir.

Q. And these other extraneous matters referred to were not involved in A-7711?*

A. May I refer to the exhibit that has to do with the National Mediation Board taking jurisdiction?

Q. If your counsel can locate it for you.

A. (Witness refers to various documents.) I would like to, if I may,—would you ask your question again?

(THEREUPON, the last question* was read [53] to the witness by the Reporter.)

A. No, sir, only the three items from the January 6th proposal was made a part of 7711.

Q. Now, did you understand that the purpose of that proposal on the taxicab arrangement was to negotiate for an agreement which would prohibit you from using DeRoad as a terminal, Mr. McPhail?

A. No, sir, not from the wording of their Section 6 notice.

Q. Did you get that impression from subsequent negogotiations on it that they were trying to prevent the use of DeRoad as a terminal?

A. No. I was always under the impression that they simply wanted to be—wanted to attach a condition because of our transporting crews by this arrangement, and under the Section 6 notice it asked for allowances for liability protection, insurance.

Q. In other words, a means to protect and benefit the employees who were being required to travel from DeRoad to Trenton by taxicab at the beginning of their day's work?

A. Yes, sir.

Q. Now, referring back to Case No. 6755, Mr. McPhail, which was initiated by the April, 1961, Section 6 notice, did you understand that that notice was to have as its purpose the prohibiting of Trenton as a terminal point?

[54] A. Not prohibiting it out of Trenton but attaching certain conditions in the event we desired to go to Trenton.

Q. In attaching protective conditions for people who are involved in that transportation by cab from DeRoad to Trenton in the Section 6 case of 1961 the purpose was not to oppose it but to challenge your right to put it there by obtaining an agreement from you affording certain protec-

tion and mileage allowances, and so forth, for employees?

A. Well, I don't agree with your statement simply because I am sure that it was the intention on the part of the organizations when they originally served their Section 6 notice that they were in a position to challenge our right to go there, and subsequently, however, our right was sustained, and——

Q. (Interposing) But I was directing my question to your understanding of the purpose of the Section 6 notice. It was not to preclude your use of Trenton as a terminal point, was it, sir?

A. I would say that the intent was to make it so expensive for us by attaching certain conditions that it would be impossible for us to go to Trenton.

Q. Well, is it true that in an initial bargaining session you ask for more than you expect to get and negotiate the [55] differences back and forth?

A. Yes, true; when you receive the original notice, either one side gives a lot or the other side does.

Q. Did you give a counterproposal to their April, 1961, Section 6 notice?

A. Yes.

Q. What was that proposal?

A. A counterproposal.

Q. I mean what was the substance of it? Was it in a formal document?

A. Oh, yes. We have copies of it in our files. If you care, we could produce them.

Q. Do you remember the substance of it?

A. I remember——

Mr. CURPHEY: (Interposing) If your Honor please. I object to this on the ground that it is irrelevant to the legal issues involved here. I think we are going to get far afield if we get into the terms of the bargaining. I think it is incompetent, irrelevant and immaterial and will cloud the legal issues.

Mr. LYMAN: I am not trying to get into the bargaining matter, but asking him about the subject matter of the Section 6 notice and the counterproposal [56] made in 1961.

The COURT: I am inclined to think that since one of

the issues is that this is a different matter than the 1961 notice, it would seem to me that what they were actually bargaining about at that time is relevant so that we can determine whether this is different or part of that.

Mr. LYMAN: That is correct, your Honor.

Q. (By Mr. Lyman—Continuing) Mr. McPhail, would you say that the proposal handed to Mr. Vane on December 16, 1965, had or covered the same general subject matter as the organizations' 1961 proposal and your counterproposal to that?

A. Well, I think they are in the same ball park. However, I think there are restricting—various restrictions placed upon our operation that were not similar. And of course there were some that were similar.

Q. You mean in the specific proposals of the two organizations, that there were some different items between the two proposals?

A. In the first place, in the 1961 notice they were—the organizations were conceding that we could operate within —I don't know, within fifteen miles one way or the other [57] out of Trenton; while the December 16, 1965, proposal restricted it to a mile or a mile and a half, and that in itself is a marked difference.

Q. I appreciate that, Mr. McPhail, but the general subject matter was the same, was it not: To attach conditions and protection, perhaps, to your use of Trenton as a terminal point and not to prohibit the use of Trenton as a terminal point?

A. Yes.

Q. Now, suppose that you had reached agreement in Case No. 6755 instead of breaking off and declining a proffer of arbitration—suppose you had reached agreement—would the taxicab case have arisen?

A. I don't think so.

Q. So that if in the course of the handling of negotiations in the taxicab case you decided to take another look at going back to Trenton, that could have settled both disputes, couldn't it?

A. If we had negotiated an agreement.

Q. So that if you had negotiated an agreement to go back

to Trenton there wouldn't have been a taxicab operation, would there?

A. No, if we had negotiated an agreement several years ago, [58] before we got into the taxicab arrangement.

Q. Or even—well, let's assume in a wild flight of fancy, Mr. McPhail, that you had accepted Mr. Upham's offer of December 16, 1965, that would have ended the taxicab case, would it not?

A. May I refer to Mr. Upham's Section 6 notice?

Q. Yes. I am not asking you to agree with it; it is a hypothetical question. Which exhibit are you examining now, Mr. McPhail?

A. Exhibit No. 9. Actually, the Section 6 notice in itself does not confine itself to Trenton. Number One, however,——

Q. (Interposing) Which Section 6 notice are you talking about now?

A. The January 6, 1965, notice of the Trainmen.

Q. That is the one relating to the taxicab situation, isn't it?

A. Yes, sir.

Q. That notice did not involve Trenton at all, did it?

A. It didn't say that it did.

Q. Well, getting back to what I am driving at, Mr. McPhail, if you had agreed upon the use of Trenton as the terminal point, which was provided for in Mr. Upham's December 16th proposal, then you wouldn't have been running men from DeRoad to Trenton by taxicab, would you? [59] A. No, sir.

Q. Now, if you had agreed upon Mr. Upham's December 16, 1965, proposal, would you feel that that would have settled all of the issues involved in Mediation Board Case No. 6755 and that you had negotiated to a standstill?

A. Mr. Lyman, as far as I am concerned I think we are getting into a hypothetical situation and I don't feel I am qualified to state one way or the other, for myself or for the carrier.

Q. I am not trying to be unfair, Mr. McPhail, and I appreciate your arguing to this Court that 6755 was a dead issue and that anything that came along that was new would in your judgment be a new dispute, and you have so testified.

But if you will assume hypothetically with me that you were mistaken in that No. 6755 were still alive, would not the Upham proposal of December 16, 1965, have settled all the issues in 6755?

A. I am not sure that it would.

Q. Why do you say that? What would have remained in dispute under the Section 6 notice of 1961 that would not have been settled by Upham's December 16th proposal?

A. Well, that places me in a difficult position when you are talking about a hypothetical question, because I would have [60] to know the agreement was consummated and whether or not it embodied everything embodied in the December 16th Section 6 notice.

Q. Didn't you go through negotiations on these matters? You are familiar with that, aren't you?

A. In 1961, yes.

Q. You had a series of negotiations on it, didn't you?

A. Yes, sir.

Q. Yes, extending over a two-year period, I guess, before you exhausted the procedures of the Railway Labor Act; isn't that correct?

A. Yes, sir.

Q. And if you had reached agreement on Upham's December 16th proposal—or one like it, let us say—in April, 1963, wouldn't you have considered that was a wind-up of your Case No. 6755?

A. I would say that if we had reached agreement that certainly 6755 would have been closed upon the consummation of an agreement.

Q. Well, it covered the same subject matter, the December 16th proposal, as 6755?

A. No, it did not.

Q. Oh.

[61] A. I should like to remind you that Section 6——

Q. (Interposing) Go ahead.

A. (Continuing)—that the Section 6 notice of 1961 embodied requested that were desired by three organizations, whereby the Trainmen's notice of December 16, 1965, pertained only to requests from the Trainmen.

Q. That is a very valid conclusion, Mr. McPhail, and perhaps I should have framed my question in terms of whether

. . .

or not that would have been a settlement of the issues between the carrier and the Trainmen.

A. It could be; depending, of course, upon the type of agreement that was consummated, there might still be outstanding disputes.

Q. Is it your understanding that the April, 1961, Section 6 notice was limited in its purpose and scope to the proposed operation of the terminal at Trenton and did not encompass other points on the railroad?

A. What was the date of the notice?

Q. The Section 6 notice of April, 1961. I don't have the exact date of it, but it is the notice that culminated in Case No. A-6755.

A. Right. Now, what was your question?

Q. Was it your understanding that the subject matter of [62] that notice ending in A-6755 was limited to the establishment of a terminal at Trenton, or did it encompass other points on the railroad?

A. No, it was confined to Trenton.

Q. Even though it was not so worded, you arrived at this understanding?

A. It referred to Trenton specifically.

Q. I see. And the December 16th proposal of Mr. Upham was limited to Trenton, was it not?

A. Yes, because it provided for a certain area in Trenton, Mr. Lyman.

Q. Had you had any discussions at all with any of the organization people, or any of the members of these defendant organizations, prior to the December 16th proposal on any proposals about going back to an attempt to open a terminal point at Trenton?

A. How far back are you going?

Q. Between the time that the Mediation Board concluded its efforts and you said the matter was mooted until December 16th, 1965.

A. As far as I can recall, there were not any actual conferences docketed. However, there were occasions to have some passing remarks between the general chairman or between [63] myself and the vice president representing the Trainmen at that time as to what might be done at Trenton.

However, it was simply passing remarks, certainly nothing I negotiated or any proposals mentioned or discussed.

Q. Now, Mr. McPhail, when the Mediation Board closed its files in 6755 did you then feel that that matter had been handled to a conclusion under the Railway Labor Act and that the employees would be free to strike if they had anything to strike over?

A. Did you say "65"?

Q. I think I said "6755." When the Board closed its files in 6755 did you then feel that both parties were under the Act free to use their economic strength if you had gone ahead with your plans?

A. At that time. In fact, I always did feel that we had the right to go to Trenton.

Q. There was no question in your mind that everything that was done that was prescribed by the Act had been completed and either party was free to take any steps it wanted to take?

A. At that time, yes.

Q. Was that why you decided to abandon your plan to go to Trenton, because if you did the organizations might strike?

A. No, sir. We also, of course, have to consider our customer, [64] and obviously if we get into any labor situation it reflects on our relationship with the customer, and rather than upset that relationship we decided to place our crews at Trenton until such time until we could determine some other course of action.

Q. You don't mean Trenton but DeRoad, do you not?

A. DeRoad. I'm sorry.

Q. So in the light of those considerations you told the Mediation Board and the other parties that that whole matter of the move to Trenton was moot?

A. Yes, sir.

Q. And it was not until after you again renewed your interest in Trenton this year that there was any effort made by the organizations to strike over that situation; is that not correct, Mr. McPhail?

A. It not only involved the Trenton arrangement, insofar as Monsanto is concerned, but we have this arrangement

with McLouth Steel Company next month and we will be switching that plant which will perhaps take two crews to operate in that area, which is additional business.

Q. Now, Mr. McPhail, going back again to 1961 and this Section 6 notice that was served on your company—I believe it was in April of 1961—which resulted in Case No. 6755, [65] that notice had been preceded by a bulletin posted by the carrier, had it not, announcing a proposed establishment of trains to operate out of Trenton?

A. Not the establishment of trains, the transfer of trains.

Q. The transfer of trains then.

A. Yes, and that proposal was also included in a letter.

Q. So that it was the threat to move to Trenton which precipitated the 1961 Section 6 notice?

A. Yes, sir.

Q. Would you say that there is any difference in substance, other than the train numbers, between the 1961 Section 6 notice and your bulletin of September 19, 1966, which precipitated our presence here in court today?

A. Well, I certainly would like to see or have an opportunity to observe the two bulletins to make a comparison.

Q. You don't have copies of them with you?

A. I haven't, no, sir.

Mr. LYMAN: I haven't had these marked yet, your Honor. I will show this to the witness to see if it refreshes his recollection.

Q. (By Mr. Lyman—Continuing) Directing your attention to this letter of February 21, 1961, Mr. McPhail, does that refresh your recollection as to the proposal you made prior [66] to the 1961 Section 6 notice?

A. Yes. At that time we had four assignments operating out of Lang, and this was a letter to the general chairman indicating that because of our drastic drop in revenue that we desired to transfer 406 and 407 from Lang to Edison.

Q. Now, going back to my original question, Mr. McPhail, would it be fair to say that that notice is the same in character as the September 19, 1966, bulletin which precipitated this action?

A. Well, Mr. Lyman, I certainly don't want to be argumentative, but if you look at it in a different light the letter you have there is advice to the organizations, whereas the bulletin dated September 19th is a bulletin that we are required by the rules to issue.

Q. I didn't mean to raise any question about that, but they deal with the same kind of proposal, don't they?

A. Which is true, which is the only way we can get crews up there. The only way we can get crews up there is to establish it by bulletin.

Q. You sent a letter, filed or posted a bulletin, and that was followed by a Section 6 notice by the three organizations seeking an agreement which would attach protective clauses to that move, is that correct?

[67] A. I can't agree that they are the same, because in 1961 we wanted to transfer two trains, and on September 19th we are talking about a new assignment.

Q. But both involved the establishment of Trenton as a terminal point?

A. Yes, sir.

Q. Has Trenton ever been a terminal point?

A. No, sir, neither has Monroe either or any other point except DeRoad.

Q. We are not concerned with Monroe or any other point, Mr. McPhail, but with Trenton, isn't that true?

A. Yes, but I am only pointing out that that is a difference.

Q. So that it was the proposal to establish Trenton as the terminal point and the purpose of using it to tie trains up that precipitated the Section 6 notice of 1961?

A. Yes, sir.

Q. And that was subsequently handled through the Board, and then you said the whole thing was moot—or through the Act—and when you said the whole thing was moot after you got through all the procedures of the Act.

So you didn't exercise your right under the statute to go ahead and do whatever you pleased after handling it under the Act, and you made no further move until this year to go [68] back to this proposal, is that right?

A. We had no reason after that; we were no longer

switching for Monsanto. Of course it was moot; we had no need for the assignments.

Q. Haven't you switched at Monsanto at any time from 1963 until this month?

A. Yes, sir, we switched. We went in in 1964 and 1965.

Q. Now, you made no move in 1964 or 1965 to go back to Trenton, did you?

A. No, sir, because we did not have the same reason that we have now.

Q. What is the difference between switching Monsanto in 1964 and 1965 and switching it in 1966 and 1967?

A. There is no difference there, but we have an additional motive for going to Trenton.

Q. And what is that?

A. The entry into the McLouth Steel plant.

Q. In other words, you would be establishing more trains if you go to Trenton in 1966 than you would have established if you had gone there in 1961, is that right?

A. Yes, that is true. It is not feasible to operate all of those trains out of Lang.

Q. So it is a difference in quantity rather than kind, is [69] it not?

A. I would say that is correct.

Q. What are the nature of the savings that you would effect by moving to Lang—Trenton?

A. Well, from DeRoad or from Lang?

Q. Well, let's say—take each one in turn. What would you save by serving Trenton instead of DeRoad?

A. I think out of DeRoad—we are operating out of DeRoad now, and the last year we served Monsanto—are you looking for a monetary figure?

Q. No, I am not. I am asking for the nature of the savings. In other words, in what area would they lie?

A. The area would be the elimination of the extremely heavy expense of transporting crews from DeRoad—or between DeRoad and Trenton.

Q. At the present time DeRoad is the point where those employees report to work, and from the time that they report until they get in the cab to go to Trenton, check in to work, come back and check out, they are on the payroll, is that right?

Are they being paid wages while riding the taxicab from DeRoad to Trenton?

A. Yes.

[70] Q. So that if you could make the employees report at Trenton instead of DeRoad you would save the wages you would have to pay them for that travel?

A. Yes. I don't think there is really any question that we are trying to get a more efficient operation.

Q. So that the only saving we are talking about in this case is of a monetary nature?

A. Of a monetary nature. After all, what else could it be?

Q. There is nothing different in the way the Monsanto Company plant would be serviced; it is just getting the men there to get on the trains and operating them?

A. The employees would not have to drive to DeRoad. They could drive to Trenton rather than drive through the congested areas of Lincoln Park and River Rouge up there. Certainly they have some equity in this situation also.

Q. Well, what do you save by making them report at DeRoad instead of the Lang Yard, for instance?

A. We save the time it takes them to go from—the greater distance from Lang in Toledo to Trenton. It is more difficult because of the heavier switching operations that we have at Lang to get them out of the yard with a train.

And of course it is a run of about 34 or 35 miles up there, in contrast to DeRoad, which is only 10 miles, and that [71] works in reverse upon proceeding to the tie-up point.

Q. So that the carrier saves money by using DeRoad instead of Lang to service the Monsanto Company plant, but that saving is accomplished at the expense of the employees, isn't it?

Mr. CURPHEY: I object to that question as argumentative, your Honor.

The COURT: Objection overruled. This is cross examination. I am very liberal on the point.

Q. (By Mr. Lyman—Continuing) In other words, the carrier has a shorter cab run from DeRoad to Trenton than from Lang to Trenton, but the employees whose homes are centered around, presumably, an area of which Lang would

be the central location, he would have to transport himself from Toledo to DeRoad to go to work?

A. By the same token, at Trenton—or to Trenton it would be shorter. So we are also giving him a saving.

Q. I don't mean to get into any bickering, Mr. McPhail, but I am simply trying to get the mechanics of what we are talking about here.

You did service Monsanto for many years by using Lang as the terminal point, did you not?

[72] A. Yes.

Q. For how many years was that?

A. I don't feel I am qualified to answer that.

Q. Well, ——

A. (Interposing) Many years.

Q. Maybe I was insulting you by implying that you were that old, Mr. McPhail.

A. No, not really.

Q. Now, Mr. McPhail, I understood your testimony to be that you have submitted to the National Railroad Adjustment Board a dispute arising out of—or the dispute involved in the December 16th proposal that Mr. Upham gave you. Did you intend to so testify?

A. Well, I think it is a matter of record that we have already submitted that dispute to the First Division.

Q. Well now, you told me a little while ago that Mr. Upham's proposal didn't involve any question of your right to establish Trenton as the terminal point. It was for the purpose of obtaining protective conditions for employees if you did establish it, is that correct?

A. Yes, sir.

Q. That is not included in your submission to the Adjustment Board, is it?

[73] A. His memorandum of agreement?

Q. No, the dispute over whether or not you would give protective conditions to employees when you establish a terminal at Trenton. Was that submitted to the Adjustment Board?

A. May I refer to the submission itself?

Q. I don't know where it is at the moment. Perhaps your counsel can help you.

A. (Referring to documents.) The issue in dispute, as

set forth in our ex parte submission, was asking for the First Division to decide whether or not there were any restrictive clauses in the contract that would prohibit the carrier from establishing a road crew at Edison.

Q. Had the Trainmen ever claimed that there were such causes that would prohibit you from establishing a terminal point at Trenton?

A. Yes, they have. Sometime ago they said we didn't have the right, but since the decision we have received in our favor I would say that they for all practical purposes have at this time conceded that we have the right to go there, but they desire to attach the conditions to it.

Q. So that you don't have any current dispute, with the Trainmen at least, as to your right under their current [74] agreement to set up the terminal at Trenton?

A. Well, when you look at it from a practical standpoint, even though they concede the right of the railroad to go there, they attach conditions such as to make it prohibitive. So in effect we don't have the right.

Q. Will you answer my question, Mr. McPhail? My question is whether you have any current dispute with the Trainmen over your right to set up a terminal at Trenton.

A. There is not a formal dispute, no.

Q. Well, have you handled any such dispute or any claims to that effect on your property with the Trainmen?

A. We have not had any cause to handle claims.

Q. Because you didn't make any change?

A. Because we didn't make any change.

Q. Since you notified these organizations for the first time this year of your intention to set up a terminal at Trenton, as illustrated by the bulletin notice which you issued in June, then recalled it, and then your subsequent September 19th notice of last month, Mr. McPhail, were any claims from the Trainmen precipitated by those notices or have any been filed since those notices to the effect that your current agreement won't let you do this?

A. I don't believe we have any claims because we have [75] not—I can't answer that without qualifying this statement, because we did work the job one day at Trenton, and whether or not there are any claims that would have progressed or followed would have been without my knowl-

edge, because they would have progressed at the superintendent's level and I would not have knowledge of it.

Q. But we didn't have any claims before you filed a submission with the Adjustment Board, isn't that correct?

A. No claims.

Q. And your Adjustment Board submission, regardless of the way you describe it in your Complaint, is couched in terms simply of asking for an interpretation of your current agreement, is it not?

A. Yes.

Q. And it does not ask the Adjustment Board to settle this dispute of whether or what kind of agreement should be reached covering protection at Trenton, Mr. McPhail, so how do you figure that this Adjustment Board could handle and dispose of this dispute on that kind of submission?

Mr. CURPHEY: I object to that question, your Honor. In the first place, it is argumentative, and it is a legal argument on the part of counsel. The argument should be made to the Court at the conclusion [76] of the evidence.

Mr. LYMAN: We will do that, too.

Mr. CURPHEY: I know, but you are arguing to the Court through the witness now.

Mr. LYMAN: I think it is proper to inquire into his motives.

The COURT: The objection will be overruled.

The WITNESS: Will you please restate the question?

The COURT: Repeat the question, read the question, Mr. Archambault?

(THEREUPON, the question was read by the Reporter, as follows: "Q. And it does not ask the Adjustment Board to settle this dispute of whether or what kind of agreement should be reached covering protection at Trenton, Mr. McPhail, so how do you figure that this Adjustment Board could handle and dispose of this dispute on that kind of submission?")

A. Frankly, I don't know what kind of a decision we are [77] going to get from the Adjustment Board, Mr. Lyman. Of course, it is our position that we already have clauses in our contract to provide for going to Trenton and

establishing Trenton as a terminal. I don't know what kind of a decision we are going to get.

Q. How do you think that an award holding that you do have a right under your agreement to go to Trenton would resolve the dispute between your organization and the Trainmen as to whether or not you will agree on protective conditions for people at Trenton?

A. I don't think the First Division is going to tell us what conditions should be imposed.

Q. You say you do not think so?

A. I don't think they will, no.

Q. That is not what the file says, is it?

A. That is right, but they can rule on any dispute that may exist.

Q. Do you mean a dispute over contract negotiations or interpretation?

A. Contract interpretations.

Q. But nothing to do with making a new contract?

A. No.

Q. So that when you said that the December 16th proposal of [78] the Trainmen for a new contract was submitted to the Board as currently pending and that is its present status, that is not very accurate, is it?

A. Yes, I think it is accurate, because here we have a simple subject of dispute and I think it is properly referrable to the First Division.

Q. When did you refer this submission to the First Division? When was it filed?

A. I don't have the letter of transmittal on this.

Q. Isn't it a fact that it was filed just a day or two before this lawsuit was filed?

A. Yes, I would say so.

Q. Had there been any discussions with the Trainmen on your property prior to the filing of this submission to the Board of the dispute represented by the submission?

A. With the Firemen?

Q. The Trainmen. You filed this against the Trainmen, as I understand it.

A. Yes.

Q. Had you discussed it with them at all on the property before you filed with the Board?

A. Discuss what?

Q. The question of whether or not your agreement gave [79] you the right to go to Trenton, which is what you asked the Board to decide for you.

A. Which is true, but I don't believe there was any discussion as to the right; I don't think that ever really got into it. They were endeavoring to enforce certain conditions.

Q. By negotiating a new agreement?

A. Right.

Q. Not by a claimed interpretation of your agreement?

A. Not as it pertained to the particular claim.

Q. When did it first occur to you to file your submission to the Board?

A. When it appeared very much as though we were going to get into a legal situation.

Q. Well, it is a fact, isn't it, that your counsel advised you that it would be a good idea to have something pending before the Adjustment Board so that you could say that this is a minor dispute?

A. I don't think there is any question about that, Mr. Lyman.

Mr. CURPHEY: I object to the inference here, your Honor, and state that the witness testified on direct examination that he filed this upon the advice of counsel. There is no question about it. But there is an improper inference in that question.

[80] The COURT: Objection overruled.

Q. (By Mr. Lyman—Continuing) Do you normally file submissions with the Adjustment Board without any handling on the property?

Mr. CURPHEY: I object to this, your Honor, as irrelevant.

The COURT: Overruled.

A. Well, certainly not, Mr. Lyman. We have to go through the procedures of the Railway Labor Act, and until we do—and in particular reference to the disputes—until such time as conferences are terminated on the property, neither we nor they have a course to follow.

Q. Well, isn't it true and is it your understanding that

with reference to Adjustment Board cases there is a requirement that the matter must be handled to a conclusion on the property in the usual manner?

A. Yes, sir.

Q. And there has been no such handling on this submission, has there?

A. Yes; there was a letter of declamation sent to the Trainmen's organization.

Q. Declining the December 16th proposed agreement, you mean?

A. Yes, sir.

[81] Q. But there has been no handling on your property in the usual manner of a dispute over the meaning of their current agreement, has there, insofar as your right to go to Trenton is concerned?

A. On the question of our right to go there, they are also questioning the interpretation of the rules. In other words, the rights are set forth in the contract.

Q. As to the right under the agreement, there had been no handling of that question on your property?

A. No, sir, not as to the right.

Q. But that is the question that you submitted to the Adjustment Board, is it not?

A. Well, yes, it is, because the dispute centered around the interpretation of the contract.

Q. Now, in discussing Mediation Board Case No. A-6755, Mr. McPhail, you testified that the Firemen's organization, which had been a joint participant in that case with the Trainmen, withdrew their Section 6 notice and withdrew their application for services of the Mediation Board because of their intention to file a submission with a special board objecting to your move to DeRoad; is that accurate?

A. Yes, sir.

Q. But that withdrawal did not occur prior to the Board's [82] completion of its handling of A-6755, did it?

A. May I refer again to the exhibits to get the dates straight?

Q. Yes.

A. Perhaps I can get it from here. I don't have the letter before me showing the date of the withdrawal from the Section 6 notice by the Enginemen (sic). However, I do

have the date of the award of the Special Board of Adjustment dated November 30, 1965.

But without having the actual date of the letter of withdrawal, I am quite sure that they withdrew on the basis—and it was so stated in a letter—that the settlement of this case would, for all intents and purposes, settle the question of the right of the carrier to establish outlying terminals.

Q. A letter to whom?

A. A letter from the Enginemen to the carrier.

Q. They didn't do that, however, until they had withdrawn from the mediation proceedings, did they?

A. Well, at the same time, and it was embodied in the same letter that made reference to A-6755. They made reference to the fact that there was no agreement that could be reached, but they were going to withdraw as participants in A-6755 on the basis that the settlement before the Special Board of [83] Adjustment would settle the issue.

Q. Wasn't the basis on which they withdrew rather the fact that you had represented to everybody that the matter was moot, and the parties in effect said that in view of your statement they would withdraw their application?

A. No, sir, they didn't state that to me.

Q. You are familiar with this correspondence from the Board to the parties, are you not?

A. Yes, and also the letter we received from the Train—or the Enginemen.

Q. Do you have a copy of that here?

A. Yes, we do.

Mr. LYMAN: Was that included in the exhibits filed this morning?

Mr. CURPHEY: It is not included, but here it is if you want it. (Handing documents to counsel.)

Q. (By Mr. Lyman—Continuing) The letter you are referring to is the letter from the Firemen to yourself?

A. Yes, sir.

Q. Would you look at this, what your counsel has handed me, to see if it refreshes your recollection?

A. This is the letter to which I am referring.

[84] Q. What is the date of it?

A. September 10, 1965.

Q. 1965?

A. Yes.

Q. And that is a withdrawal of the Firemen's participation in Case No. A-6755, and it so indicates, does it not?

A. It is not a withdrawal. It is a notification to us of an intent to withdraw.

Q. But it does specifically refer to that Mediation Board proceeding by case number, A-6755, does it not?

A. Yes, sir.

Q. And that was—what was the date, again?

A. September 10, 1965.

Q. When did you make the move to DeRoad to start operating out of there on this taxicab arrangement?

A. On the taxicab arrangement?

Q. Well, let us say, start servicing Trenton out of DeRoad. Put it that way.

A. The taxicab arrangement was started in approximately December of 1964 and continued through 1965. It was in the latter part of 1962, to the best of my recollection, that we established an assignment at DeRoad. I think we established two, if I am not mistaken.

[85] Q. Was it the understanding that anyone felt that, that this submission to the Special Board was involved in the Trenton situation?

A. I can't speak for "anyone," Mr. Lyman.

Q. Wasn't the submission in fact strictly limited to the situation at DeRoad?

A. Which submission are you talking about?

Q. Before the Special Board of Adjustment.

A. It had to do with DeRoad, yes, sir, as specifically stated in the claim.

The COURT: Will you have much more cross examination of the witness, Mr. Lyman? We have just about reached noon recess.

Mr. LYMAN: If I continue it would be half or three-quarters of an hour, your Honor, but perhaps I might be able to make it shorter during recess by a weeding-out process.

The COURT: If it is going to take you more than five or ten minutes, then I think we had better take our noon recess at this time.

Court will be in recess until 1:30.

[86]

AFTERNOON SESSION
Thursday, October 6, 1966
1:30 o'clock P.M.

The COURT: You may resume your cross examination, Mr. Lyman.

Mr. LYMAN: If the Court please, I think the noon recess was beneficial, and considering it over the lunch hour we have no further questions of Mr. McPhail.

The COURT: Mr. Curphey, any redirect on your part?

Mr. CURPHEY: Yes, your Honor, and I will be brief.

The COURT: You may proceed.

* * * * *

REDIRECT EXAMINATION.

By Mr. JOHN CURPHEY:

Q. Upon cross examination, Mr. McPhail, you were shown a letter by opposing counsel to refresh your recollection, and I should like to now hand you what has been marked Plaintiff's Exhibit 18 for purposes of identification.

[87] A. Exhibit 18 is a letter dated September 10th. It is a letter written to me by Mr. D. C. Deering, vice president of the Brotherhood of Locomotive Firemen & Enginemen.

Q. Is that the letter you referred to on cross examination?

A. Yes, sir.

Q. Now, with reference to Plaintiff's Exhibit 8, which is the submission to the Adjustment Board about which you also testified on cross examination, will you state whether or not this submission was made upon advice of counsel?

A. Yes, it was.

Q. And whose advice was that?

A. By you.

Q. Now, in connection with this matter will you state whether or not the matter was handled on the property up to and including the highest designated officer?

A. Yes, it was.

Q. Now, Mr. McPhail, under your existing agreements

with the Trainmen will you state whether there was anything in those agreements that would have prevented your establishing a terminal at Trenton prior to last month?

Mr. LYMAN: If the Court please, I object to that question. It calls for a conclusion of the witness on the law and his interpretation of the [88] contract. The contract speaks for itself if he wants to put in evidence. I don't think the witness's opinion of the legal effect of the agreement is proper.

The COURT: Objection sustained.

Q. (By Mr. Curphey—Continuing) Is there any rule, Mr. McPhail, in your contract with the Trainmen in connection with establishing facilities at Trenton?

Mr. LYMAN: If the Court please, I object to that question on the ground that the contract is the best evidence for what it contains, and I am sure the document is available to the plaintiff as a contracting party, and we should leave it to the Court to determine what its effect is.

The COURT: The objection to the question will be sustained.

Q. Now, I am going to hand you what has been marked Plaintiff's Exhibit 19, Mr. McPhail. Will you please identify that for us?

A. Exhibit 19 is the agreement between The Detroit & Toledo Shore Line Railroad Company and its Trainmen and the Yardmen represented by the Brotherhood of Railroad Trainmen effective September 1, 1957.

Mr. LYMAN: May I see that document, [89] Mr. Curphey? (Thereupon, the said document was handed to Mr. Lyman by Mr. Curphey.)

Q. (By Mr. Curphey—Continuing) Now, handing you once again what has been marked Plaintiff's Exhibit 19, Mr. McPhail, and with specific reference to Article 25 on Page 22 of the exhibit, I will ask you whether there is any rule with reference to the establishment of facilities and in connection with establishing outlying terminals?

A. Yes, there is Article 25(b). It is a clause representing an agreement between the parties as to the establish-

ment of suitable quarters at terminals for employees going on and off duty, and it tells of the provisions that will apply when such quarters are established.

Q. Now, will you state whether or not you had in fact quarters at Trenton prior to last month?

A. No, we did not.

Q. Now, upon cross examination Mr. Lyman inquired at some length about the lack of claims with reference to Trenton.

I should like for you to explain to the Court why you hadn't had claims relating to a terminal at Trenton.

Mr. LYMAN: If the Court please, I don't think this witness is qualified by virtue of his position or any background testimony here to testify as [90] to why somebody else didn't file a claim, a time claim.

Mr. CURPHEY: I think the witness is entitled, Mr. Lyman, to testify on this point.

Your Honor, Mr. Lyman went into this arrangement upon cross examination for the purpose of creating—or for the purpose of showing such an agreement, I think, and I think I am entitled to explain it, or have the witness explain it, and I think——

Mr. LYMAN: (Interposing) If the Court please, I didn't go into the question of why someone, other than this witness, might have done or refrained from doing anything. This is obviously not asking for a fact within the witness's knowledge, but is just asking for some speculation by the witness, in the light of his own approach, as to why somebody else did or didn't do anything. It does not even ask for a fact, your Honor, but asks for an opinion.

Mr. CURPHEY: If your Honor please, it does ask for a fact, and I suggest that your Honor reserve ruling on this question until he hears the answer of the witness, at which time Mr. Lyman can make his motion to strike. I suggest that the answer of the witness will demonstrate it is a factual matter.

[91] The COURT: We are coming close to the edge, gentlemen, but I will reserve my ruling and the witness can proffer his answer and then I can determine the matter.

A. Well, I believe it is a matter of fact that, with the ex-

ception of the one day we established and operated the job at Trenton last month, there were no other occasions on which we did operate, and therefore there was no basis for any claims.

The COURT: I will overrule the objection. The answer may stand.

Q. (By Mr. Curphey—Continuing) Mr. Lyman also inquired on cross examination as to certain similarities or dissimilarities between the memorandum of agreement submitted on June 8, 1961, and the memorandum of December 16, 1965.

I want you to state briefly, Mr. McPhail, just what are, as a practical matter, the substantial differences between these two notices?

A. Number One, of course, was the confinement of the area.

Mr. LYMAN: The notices will speak for themselves. The witness has described their contents in detail. It does not serve any purpose, if the Court please.

The COURT: The objection will be [92] sustained.

Mr. CURPHEY: Before I excuse the witness, your Honor, I should like to offer into evidence Plaintiff's Exhibits 1 through 19.

The COURT: What about Exhibit 19?

Mr. CURPHEY: Including Exhibit 19. I beg your pardon.

The COURT: Any objection?

Mr. LYMAN: No objection.

The COURT: They will be received.

Mr. CURPHEY: You are excused, Mr. McPhail.

The plaintiff will now call Mr. Donald G. Vane.

The COURT: The witness may be sworn.

* * * * *

[93] UNITED STATES DISTRICT COURT
Toledo, Ohio
Thursday, October 6, 1966
1:45 o'clock P.M.

THEREUPON, the Plaintiff called as a witness, MR. DONALD G. VANE, who, having been previously duly sworn by the Clerk, testified as follows:

DIRECT EXAMINATION.

By Mr. JOHN CURPHEY:

Q. Will you state your full name, please, and your address?

A. Donald G. Vane, 1245 Derby Road, Troy, Michigan.

Q. And your position, sir?

A. Labor Relations Officer for the Detroit & Toledo Shore Line Railroad.

Q. How long have you held this position?

A. Since September 8, 1965.

Q. Directing your attention to December 14, 1965, were you present during a conference with the Trainmen's organization?

A. Yes, sir, I was.

Q. Where was this conference held?

A. In the carrier's offices in Detroit, Michigan.

[94] Q. Who was present on behalf of the Trainmen?

A. Vice president F. C. Montgomery, general chairman William Upham, and vice chairman Ritchie.

Q. What was the subject matter of the conference?

A. The conference consisted of a number of subject matters and disputes and grievances.

Q. Was there a regular agenda in connection with the conference?

A. Yes sir, there was.

Q. Over what period of time—there was more than one conference. Over what period of time did the conferences take place?

A. The dates were December 14, 15 and 16, 1965.

Q. Handing you what has been received in evidence as Plaintiff's Exhibit 6, Mr. Vane, was this instrument submitted to you during the course of that conference?

A. Yes sir, it was.

Q. And what was the context of the discussion at that time, when it first arose?

A. As I recall it, on the afternoon of December 15th Mr. Upham asked that if he did submit a proposed agreement covering the establishment of assignments at Edison and Trenton would we give it consideration, and I told him that we would be glad [95] to give it consideration, and on the 16th after all of the matters on the agenda had been discussed, then the agreement was submitted.

Q. When it was submitted to you was any reference made to Mediation Case A-6755?

A. No, sir.

Q. Was any reference made to this mediation case in the context of this memorandum at any time during the conference?

A. No, sir.

Q. Was there thereafter any reference to Mediation Case A-6755 in reference to this memorandum of December 16, 1965?

A. No, sir.

Q. How was it treated thereafter?

A. Well, it was considered as a new proposal, a new dispute, and it was given consideration, and subsequently it was declined as submitted by the organization as being unacceptable.

Q. When was it declined, sir, as you recall?

A. I believe it was January, 1966; the exact date I am not sure of.

Q. Was it considered by you at any time as a part of Mediation Case A-6755?

A. No sir, it was not.

Q. How was it filed?

[96] A. Under a subject matter filed in their general files. If I remember correctly, the file number was 59.9.

Q. Following the declination to which you referred, Mr. Vane, was there any further handling of it on the property?

A. Not until submission of the ex parte matter through the NREB.

Q. Now, did there come a time thereafter that you received a request for a conference in Mediation Case A-6755?

A. Yes, on—I believe in the letter dated August 10, 1966, from B. R. T. vice-president Burke. A letter of August 10th, I should say.

Q. Was there any reference in that communication to the proposed memorandum agreement of December 16, 1965?

A. No, sir.

Q. Did you subsequently have such a conference?

A. Yes, sir, on September 16, 1966.

Q. Were there any other matters before you at that time?

A. No, sir.

Q. How did the conference begin?

A. Mr. Burke, the vice-president, asked if the carriers still intended to establish assignments at Trenton and he was informed that we would; and in fact it was contemplated that the bulletin would be issued the following Monday, on September 19th, with the assignments to be effective September 26th.

[97] Q. Were there any discussions or negotiations at that conference with regard to this proposed memorandum of December 16, 1965?

A. No, sir.

Q. Was there anything said by a representative of the Trainmen present at that conference which you construed as a strike threat?

A. Yes, sir.

Q. What, briefly, was said in that respect?

A. Well, after a short discussion when we could not agree, the representatives of the employees said that—"Well, then we know where we can go," and the remark was made, "Well, we'll see you in court," and they left the office at that time.

Q. Did you subsequently have any conversation with regard to the same subject matter with the defendant E. F. Gensler?

A. Yes; I believe it was on the afternoon of September 20, 1966.

Q. And what kind of a conversation was that?

A. Well, Mr. Gensler talked to me, and he stated that the bulletin—

Q. (Interposing) Let me interrupt you here, Mr. Vane Was this over the telephone or a personal conversation, meeting, or what was it?

[98] A. It was over the telephone, long-distance.

Q. And which party called which?

A. Mr. Gensler called me.

Q. Will you state whether or not he identified himsel over the telephone?

A. Yes, he did.

Q. Tell us briefly what he said with respect to a strik threat?

A. He stated that he was aware of the bulletin of Sep tember 19, 1966, being posted establishing the new assign ments at Trenton, and that in the interest of better labo relations he wanted to inform us that if the bulletin was no removed by noon of the 21st of September it would b necessary for him to take strike action on Monday, the 26th

Mr. CURPHEY: You may inquire, Mr Lyman.

* * * * *

CROSS EXAMINATION.

By Mr. RICHARD LYMAN:

Q. Mr. Vane, did you participate in the negotiations be tween the Shore Line and its operating employees and thei representatives [99] in connection with the handling of th dispute in Mediation Case No. A-6755?

A. No, sir, I did not, other than the conference of Sep tember 16, 1966, with Mr. Burke.

Q. You did not. That was your first exposure to tha particular dispute?

A. Insofar as being personally involved, yes, sir.

Q. When did you first assume your position? I don' recall what date you testified to.

A. September 8, 1965.

Q. So that you have no direct personal knowledge o what went on prior to that or during the handling of A 6755?

A. No, sir.

Q. From the time you went to work until this conference of December 14th to December 16th of 1965, had you had any discussions or conferences with anybody in the management of the railroad with respect to 6755?

A. Not on a formal basis, no, sir.

Q. On an informal basis then.

A. Oh, I certainly was aware of the case and the dispute, and the matter was discussed, of course, with my superiors and other members of the carrier family.

Q. What was the tenor of those discussions?

[100] Mr. CURPHEY: I object to this, your Honor.

Mr. LYMAN: I don't know why.

Mr. CURPHEY: It is irrelevant, what discussions the witness had or that they had with each other with regard to the pendency of any matters involving labor.

The COURT: I allow considerable latitude in cross examination.

The objection will be overruled.

A. Would you repeat the question, Mr. Lyman?

Q. What was the tenor of those discussions you had after you went to work?

A. I more or less——

Q. (Interposing) You say you had informal discussions on 6755.

A. It was more or less to determine exactly just what the dispute involved. I am sure you well understand the entire character of the Shore Line Railroad was new to me, never having been in this area before, and in order for me to be able to understand what was involved with Edison and Trenton it was necessary for me to discuss with various members of the carrier family the various physical characteristics and the past operation.

[101] Q. Was that case discussed with you as a pending and unresolved dispute?

A. Not that I recall, except that I did know, of course, that the Board had closed its files.

Q. With no agreement having been reached between the parties?

A. Yes, sir.

Q. Did you familiarize yourself with the subject matter of the dispute?

A. Yes, sir.

Q. Would you say that the subject matter of the dispute was different from the subject matter of Mr. Upham's proposal to you on December 16, 1965?

A. Yes; I considered it quite a bit different.

Q. Will you explain the differences to us?

A. Well, the agreement submitted in December, 1965, contained a great deal of differences as between the proposed agreement and the one submitted in June of 1961.

Q. Did those differences go to the subject matter of the respective proposals or to the particular items that were encompassed?

A. Well, they were different in subject matter. Actually, the only relation between the two matters so far as I can see [102] is that they both involved the Trenton station.

Q. And didn't they both consist of proposals for protective conditions and benefits for employees who would be assigned to Trenton station if they created Trenton as a terminal point?

A. Well, the original notice and the original proposal in 1961 was particularly applicable to two specified runs. This was not the case in 1965.

In 1961 it involved a change of assignment from one location to another. The 1965 proposal involved the establishment of additional assignments, and I considered that there was an extremely great deal of difference between the two.

Q. Did you base that distinction on the fact that these were different train numbers or what?

A. No, because the trains in 1961 were specifically designated, and it was specifically provided in the proposal that the trains would move from Lang to Trenton, indicating that this was a transfer of assignments, which was not in evidence in 1965.

Q. Mr. Upham's proposal to you, did that relate to particular train numbers?

A. No, it did not, which was one of the differences between that and the 1961 proposal.

Q. Did Mr. Upham's proposal, his written proposal to the carrier in 1961, deal with specific train numbers?

[103] A. Yes, sir, it did.

Q. Is that the only difference between the two proposals?

A. No, sir.

Q. Pardon?

A. No, sir.

Q. They might be different in terms of numbers of miles, or in number of cents and dollars and so forth, but didn't they both deal with the same subject matter of protecting employees who would be involved in the establishment of a terminal point at Trenton?

A. They both did contain protective clauses, yes.

Q. Now, the December 16th proposal to you from Mr. Upham did not have anything to do with the taxicab problem that was the primary purpose of your conference, did it?

A. The taxicab problem, Mr. Lyman, was not the primary reason for the three-day conference we had. It was one of the items, but not the primary one.

Q. Well, let me rephrase it. It didn't have anything to do with that item, did it?

A. Not as far as I could see.

Q. As far as the subject matter was concerned?

A. The taxicab problem was separate and covered by a Section VI notice, and the agreement of December 16, 1965, did not [104] involve the question of dead-head or the use of taxicabs.

Q. And it didn't involve DeRoad, did it?

A. No, it did not.

Q. It simply mentioned the establishment of a terminal at Trenton?

A. Yes, sir.

Q. And the 1961 proposal, as you became familiar with it, was also limited to the establishment of a terminal point at Trenton, was it not?

A. Yes, it was.

Q. Did you understand when you talked with Mr. Upham on December 15th and when he gave you this proposal on December 16th that this was to be and turned out to be a proposal strictly related to Trenton and the terminal establishment there which had been the subject of 6755?

A. Well, there could be no doubt, Mr. Lyman, in Decem-

ber, 1965, to where it referred, because it was spelled out, if I recall correctly, in Item No. 1 of that proposal; but there was no question in my mind as to the—or as to what the proposal covered or the area where it covered.

Q. You knew it was a throwback to the dispute unsuccessfully processed through mediation, didn't you?

A. Well, no reference was made by the employees to that effect.

[105] Q. I didn't ask you that. You knew that was the fact, did you not?

A. Really I must answer properly, that at the time I did not. I had—in fact, I had not even at the time had an opportunity to research the files to familiarize myself with the—with any older disputes.

Q. So on December 16th when this was handed to you and you reviewed it you had no knowledge then that it had ever been the subject of any discussions or disputes?

A. Only by vague conversation, but I didn't know what the handling of the dispute had been up until that time or what the status of it was.

Q. So it would be natural to treat it, as you did, as a new matter because you had so little familiarity and knowledge of this whole matter?

A. And because of the fact that the employees did not indicate that it was a part of any previous dispute.

Q. After you had a chance to familiarize yourself to a greater extent with the previous dispute and studied this new proposal, Mr. Vane, wouldn't you say that it dealt with the same subject matter as this previous dispute which had gone through mediation and had wound up without any agreement being reached?

[106] A. In a general sense only.

Q. The specific provisions of the proposal then and the proposal that the employees had given the company back in the spring of 1961 did have variations?

A. They did have.

Q. But the general subject matter was the same, was it not?

A. Generally.

Q. And did you consider this as a matter which would

be in agreement, in settlement, of the dispute in Mediation Case No. 7711 had you agreed to it?

A. Would you repeat that question?

(THEREUPON, the last question was read by the Reporter to the witness.)

A. In other words, are you stating, Mr. Lyman, that if we had reached agreement in 7711 would this have disposed of No. 6755?

Q. No. I think what I am saying is, would an agreement such as proposed on December 16th by Mr. Upham have covered and dealt with the issues that were involved in Mediation Case No. A-7711?

A. Well, actually, Mediation Case 7711 involves, according to my recollection, the employees' Section VI notice of January, 1966, and a carrier Section VI notice that was [107] submitted, but these are the only two items that are actually involved in 7711.

Q. And that proposal and the counterproposal were completely foreign to the subject matter of the December 16th proposal that Mr. Upham handed you?

A. Yes.

Q. Would it be accurate to say that rather than settling or disposing of Case 7711, an agreement between you and Mr. Upham in terms of his December 16th proposal to you would simply have mooted 7711, because you no longer would have continued running the taxicab operation if you had gone to Trenton instead of DeRoad?

A. Well, I don't know whether I am qualified whether—or whether I am qualified to say, Mr. Lyman, that this would have disposed of the taxicab operation, because that is an area outside of my work.

It may be possible that the carrier might have continued an operation which would have required a taxicab deadhead.

Q. But the purpose of it was to get employees from DeRoad to Trenton?

A. Correct.

Q. Trenton at that time not being a terminal point?

A. Right, correct.

[108] Q. If you had signed this agreement with Mr. Upham providing protective conditions for employees at Trenton in the initiation of Trenton as a terminal point, you would not have had this taxicab thing involved, would you?

A. As I say, this would be a matter for an operating officer to determine.

Q. Now, I think you have testified that it was December 15th when Mr. Upham asked you if you would consider a proposal of this sort if he prepared one and submitted it to you.

Was that at the conclusion of your conferences, or how did that conversation come up?

A. I don't recall, Mr. Lyman, the exact contents of what was being discussed on the 15th when Mr. Upham made that proposal.

As I recall, it seems to me like it was toward the end of the afternoon.

Q. Do you remember the words he used in discussing this with you, sir?

A. Not verbatim, but just generally to the effect that if he did bring in a proposal would we consider it.

Q. Did you understand from his conversation that he was referring to a possible settlement of some dispute of some long-time standing?

A. No reference was made to any previous dispute.

[109] Q. Did this come to you as a bolt out of the blue?

A. Well, yes, sir, because it was not on the agenda, and nothing that I recall came up that would have precipitated it.

Q. Had you had in your mind at all prior to then the possibility of establishing a terminal point at Trenton?

A. Not specifically in the immediate future, no, sir.

Q. In other words, you had just taken over in your job and they were running out of DeRoad and a problem had arisen as to the operation and the conditions to be attached to that operation out of DeRoad and that's all you knew about it?

A. Yes, sir.

Mr. LYMAN: That's all.

Mr. CURPHEY: No further questions. Thank you, Mr. Vane.

The COURT: You may stand down, Mr. Vane.

Mr. CURPHEY: Plaintiff rests, your Honor.

Mr. LYMAN: Could we have a five or ten-minute recess, your Honor?

The COURT: Very well. Court will be in recess.

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DEFENDANT'S EVIDENCE

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[110] Mr. LYMAN: If the Court please, I should apologize for not having used the recess to better advantage. We were discussing where we went from here and I haven't had an opportunity to ask the Clerk to mark a couple sets of exhibits.

The COURT: You may have him mark them.

Mr. LYMAN: I understand these will not be challenged for materiality or authenticity, as stipulated?

Mr. CURPHEY: That is correct. It [111] will expedite your presentation. It is agreeable with me to just put these into evidence without identification, with one exception.

Mr. LYMAN: What is the exception?

Mr. CURPHEY: The exception is the strike ballot of the Firemen dated February 5, 1966.

Mr. LYMAN: Let me see.

Mr. CURPHEY: I would object to that on the ground that it is irrelevant as to any matter in issue.

The COURT: Perhaps they should be numbered anyhow.

Mr. LYMAN: Very well, your Honor. Then you can object to that one. I understand that you are stipulating that we may offer them without an identifying witness, and subject, of course, to the Court's ruling on them.

Mr. CURPHEY: I am not going to object to them except for the one. You just offer them.

The COURT: Get them numbered. Then we will know which one that is and you can object to it by number.

Mr. LYMAN: There is a set for the [112] Court to have in front of him.

The COURT: Let him mark the one used as exhibits and you can put a corresponding number on the ones you want me to use.

Do you want to follow along so that you can get yours numbered, too, Mr. Curphey?

Mr. CURPHEY: Yes, your Honor.

Mr. LYMAN: I think we had better make them A, B, C and so on, because Mr. Curphey has one that he wants to object to. I will not put "Defendants" on them; I will just put "A, B, C" on them.

The COURT: That is satisfactory for my copies.

Mr. LYMAN: If the Court please, we have two sets of exhibits which we have had marked for the defendants at this time. One set corresponds with Exhibit A and so on down through to Exhibit O, which is a set of exhibits dealing primarily with—as Mr. Curphey has described it, the action of the Locomotive, Firemen & Enginemen.

Then we have another set of exhibits concerned with the Trainmen's case marked Exhibits AA through Exhibits ZZ. We came out right on the line.

[113] And in accordance with the stipulation in court today, I would like to offer those at this time and hand the Court his copies of what have been marked by the Clerk, and I move their admission subject to the objection of Mr. Curphey with reference to one of them.

The COURT: As I understand it, one of these you consider as irrelevant, Mr. Curphey?

Mr. CURPHEY: Yes, your Honor.

The COURT: Which one is the one you have in mind?

Mr. CURPHEY: Exhibit D, your Honor.

The COURT: Exhibit D.

Mr. CURPHEY: We have no objection to any of the offered exhibits with that exception; but I think Exhibit D is irrelevant. It contains a number of self-serving statements. It is a communication between the members of the union, or between the chairman of the union to members thereof, in which he recites his views on certain disputes. As I say, it is a self-serving declaration on his part. It is not pertinent to any of the issues here, your Honor, and I object to them.

The COURT: What do you say in support of this exhibit?

[114] Mr. LYMAN: We are faced with an injunction action here, the seeking of an injunction against a strike, and the plaintiff is attempting to show that the strike is for an illegal purpose.

I think that the ballot circulated to the membership of the defendant unincorporated association is relevant, and perhaps the most relevant thing here is to show what this alleged threatened strike is all about and what its purpose is, what its causes are, and why it is about to be indulged in.

The method of communicating to members of a labor

union in connection with a proposed strike is, of course, by strike ballot calculated to inform the membership what the nature of the dispute is and what they are being asked to authorize a strike call for. I think it is very relevant for that purpose.

The COURT: I have some questions about its relevancy, but I think I will reserve my ruling until I have had a chance to look at it with some degree of care and relate it to these other exhibits.

It is possible that as part of a series of exhibits it might have a relevancy that it wouldn't have standing by itself. [115] Mr. LYMAN: I might say that there are documents in these two sets of exhibits which are not dated. I think they are self-explanatory. I am referring to Agreement Proposals. I think one, at least—probably both of them—we have in the carrier's exhibits.

Some are overlapping, but perhaps it is desirable to put in complete sets, your Honor, rather than try to split them up.

The COURT: Yes.

Mr. LYMAN: But I am sure they will be self-explanatory to the Court.

With that understanding, then, these may be received?

The COURT: Yes. Of course, with the exception of Exhibit D, these exhibits will be received in evidence.

Mr. LYMAN: Yes, and the ruling is reserved on Exhibit D?

The COURT: That is correct.

Mr. LYMAN: We call Mr. Upham to the stand for direct examination.

* * * * *

[116] THEREUPON, the Defendants called as a witness, WILLIAM UPHAM, who, having been previously duly sworn by the Clerk, testified further as follows:

DIRECT EXAMINATION.

By Mr. LYMAN:

Q. You are the Mr. Upham who testified this morning on cross examination, is that correct?

A. Yes.

Q. Mr. Upham, this morning Mr. Curphey asked you whether you intended to strike and the circumstances under which you would, and why.

Do you have authority under the laws of your organization to make these decisions for yourself, or the decision of whether to call a strike on the property which you represent?

Mr. CURPHEY: I object to that question as irrelevant, your Honor, and particularly in view of the fact the objection this morning was—we didn't get into that area because of the answer of the witness. I think the whole question of strike authorization is irrelevant.

[117] Mr. LYMAN: This question, your Honor, ——

The COURT: (Interposing) He may answer.

Q. (By Mr. Lyman) Would you answer the question, Mr. Upham?

A. Do I——

The COURT: (Interposing) Better read the question to him, Mr. Archambault.

(THEREUPON, the last question was read by the Reporter, as follows: "Q. Mr. Upham, this morning Mr. Curphey asked you whether you intended to strike and the circumstances under which you would, and why.

"Do you have authority under the laws of your organization to make these decisions for yourself, or the decision of whether to call a strike on the property which you represent?")

The COURT: You can answer that question Yes or No.

A. No.

Q. Subsequent to the carrier's bulletin of September 19th did you receive any authority to call a strike?

[118] A. No.

Q. You did not?

A. Not to the 19th.

Q. Subject to the carrier's bulletin of September 19, 1966.

A. Oh. After they put the bulletin out we did receive authority from the Grand Lodge.

Q. You did?

A. Yes.

Q. What form did that authority take? How did you get the authority?

A. By telegram.

Q. From whom?

A. From the president of the brotherhood.

Mr. LYMAN: May we have this marked, perhaps AAA?

The CLERK: Yes. (So marking said document for identification.)

Q. (By Mr. Lyman—Continuing) I show you what has been marked for identification Defendants' Exhibit AAA, Mr. Upham, and ask you if that is the telegram you received from president Luna.

A. Yes.

Mr. LYMAN: We offer Defendants' [119] Exhibit AAA into evidence, your Honor.

Mr. CURPHEY: We object to it, your Honor, on the ground that it is self-serving.

The COURT: Objection overruled.

Q. (By Mr. Lyman—Continuing) Mr. Upham, you were asked this morning about the conferences of December 14th, 15th and 16th, at the conclusion of which on December 16th you submitted a proposed agreement covering the establishment of a terminal at Trenton and protective conditions for employees in connection with such a terminal, and you stated, I believe, that you weren't at that time trying to reopen negotiation on Case No. A-6755, which had gone through mediation and the Board had closed its files.

Now, between that time and the prior date on which the Board had closed its files had either party to your knowledge made any attempt to reopen negotiations on that matter?

A. Not to my knowledge, no.

Q. You had had no request for a conference from the carrier and you had made no request of them during that period, from the Board's closing of its files in 1963 until you came up with this proposal on December 16, 1965?

A. No.

Q. Is that correct?

[120] A. Yes.

Q. Why hadn't you made any attempt to reopen that matter during that period of time?

Mr. CURPHEY: I object to that question, your Honor.

The COURT: Sustained.

Q. (By Mr. Lyman—Continuing) During that period of time, Mr. Upham, had the carrier done anything or given you any indication for concern about the reopening—or the opening of the terminal point at Trenton?

A. No, not to my knowledge.

Q. Is that why you hadn't called a strike during that period of time, after the Board's efforts had terminated?

A. Well, that was one of the reasons; another one was that there wasn't a chairman for that length of time.

Q. During the period in which you were the chairman you had been advised, had you not, of Mr. McPhail's statements about the time that case was closed that the matter was moot and——

Mr. CURPHEY: (Interposing) This is extremely leading, your Honor, and I certainly object to it on that ground.

The COURT: Sustained.

[121] Q. (By Mr. Lyman—Continuing) Had you received communications or been aware of communications from Mr. McPhail in connection with the termination of mediation in Case No. A-6755?

A. Yes.

Q. What was the gist of those communications?

A. There's a letter in the file from Mr. McPhail to the Mediation Board claiming that they no longer contemplate making a change in the terminal, so thereby they considered the issue moot, the carrier considers the issue moot.

Q. What was the reaction of yourself to that statement of Mr. McPhail's?

Mr. CURPHEY: I object, inquiring about a witness's subjective intent.

Mr. LYMAN: You did it all morning, Mr. Curphey, with Mr. McPhail.

Mr. CURPHEY: No, that is not true, Mr. Lyman.

The COURT: Sustained.

Q. (By Mr. Lyman—Continuing) Did that communication or the knowledge of it motivate your decision as to whether or not to go ahead and strike over the issues involved in Case No. A-6755?

[122] A. Yes.

Q. Now, this morning you testified that during the conferences that you had with Mr. Vane from December 14th to the 16th you made no reference to Case No. A-6755 in connection with your suggestion to him that you might submit a written proposal and your subsequent submission of it on the next day, December 16th.

Did you have any further discussions, aside from referring to that case by its Mediation Board number, by way of explanation or discussion with Mr. Vane either on the 15th or on the 16th of December, 1965?

A. Yes. On the afternoon of the 15th when we discussed about bringing in a proposal to take care of the issue at hand I didn't refer to Mediation Case No. A-6755, but we did refer to the subject matter in there, and it was understood that if we were to settle the taxicab issue—or if we handled this proposed agreement that we had that it would settle everything, the 6755. That was the understanding, but it was not referred to by the number.

Q. Did Mr. Burke—or I mean Mr. Vane—did Mr. Vane make any statements to you or in your presence to the members of your committee indicating that he was aware of the existence of a previous dispute over the establishment of a terminal at Trenton?

[123] A. Yes, he did. He said—or the point was brought to him that this whole argument and issue was the management's attempt to establish the jobs at Edison, and he was told that he was beating around the bush, and that—

Mr. CURPHEY: (Interposing) I object to this continuous unresponsive answer, your Honor.

Q. Would you identify the people that communicated this to him, Mr. Upham? Was it members of your committee that told him these things or yourself?

A. I told Mr. Vane that he was beating around the bush by having taxicabs transport the men from DeRoad to Edison, when in reality what he wanted was to start the jobs at Edison.

Q. Did he respond to that?

A. Yes, he did.

Q. What did he say to that?

Mr. CURPHEY: I object to this relation of a conversation about negotiations, your Honor. It has to do with the negotiations. If we continue with this line of questioning this witness will testify as to the actual negotiations between the parties, which are substantially self-serving from his point of view, your Honor, in view of the dispute here.

[124] Mr. LYMAN: Counsel for the plaintiff here opened the door to this line of inquiry by his own examination of the witnesses, asking what went on at this conference, if the Court please, and he got information on it.

Mr. CURPHEY: I attempted to.

Mr. LYMAN: You explained it thoroughly, as I recall.

Mr. CURPHEY: I object to this. I kept the inquiry immediately on the issue.

Mr. LYMAN: He went into this thoroughly on the question of this conference, whether it involved A-6755 and so on.

Now if he says this examination is foreign to those questions, if the Court please, he is merely adopting a subterfuge in relying upon the technicality that he was referring to it by a case number. I am seeking to elicit this, whether by number or not, that they did discuss the old dispute.

The COURT: One of the problems you confront when you go into what was said at a conference or meeting is that

it is hard to say where the line is to be drawn. [125] I will overrule the objection and let the testimony continue.

A. If I could have the—could I have the stenographer read back where I left off?

The COURT: Would the Reporter read back the last question, and the answer thereto, if any was given?

(THEREUPON, the last question was read by the Reporter, as follows: "Q. What did he say to that?")

A. He said that he knew that. In reality, what he wanted was the jobs to start at Trenton, or at Edison. In other words, he was aware of it.

Q. And was it following that conversation that you went back and prepared a proposal and submitted it to him the next day?

A. Right.

Q. Was that proposal discussed during the day of the 16th of December, Mr. Upham, or was it simply submitted to him at the negotiations or discussion at that time for his consideration?

A. It was discussed and actually negotiated on.

Q. On the 16th of December?

[126] A. On the 16th of December.

Q. How long did you negotiate about it?

A. Well, I would say part of the afternoon.

Q. Was this the last item on the agenda of that conference, Mr. Upham?

A. Yes.

Q. How did those negotiations conclude?

A. Well, Mr. Vane said that he would write us and let us know, or he would acknowledge the conference, that there was some of the items that were too prohibitive—or restrictive—and some of the items we had actually negotiated on and came to an agreement on.

Q. You mean you had gotten a tentative agreement on certain items in your December 16th written proposal, subject to whether or not you had reached an agreement on the rest of them?

A. Right.

Q. Now, Mr. Upham, after that date did you take part

in any further negotiations with the carrier on Mediation Board Case No. A-6755?

A. I believe there was one more meeting held in April, and that was more of a lining up of an agenda with the vice president, new vice president, that came onto the property to assist the committee.

[127] Q. Was this a meeting at which the carrier was represented, Mr. Upham, or was it a meeting of the organization?

A. It was a meeting with the carrier and the vice president and myself.

Q. This was in April of 1966?

A. I believe so. The carrier's reply is May 31, 1966.

Q. This was confirming the subject matter of a prior conference at which you were in attendance?

A. Yes.

Q. At that time, among other items, you did discuss Case No. 6755?

A. We discussed the subject matter to that case, yes.

Q. When you say "subject matter", Mr. Upham, you mean the establishment of a terminal at Trenton?

A. Yes.

Q. Now, prior to the institution of this lawsuit did the railroad or its officers at any time tell you, Mr. Upham, that they couldn't deal with you on the December 16th proposal because you hadn't served a Section 6 notice on it?

A. No.

Q. Is this lawsuit the first occasion you have had to receive any such objection to negotiation on that?

A. Yes.

[128] Q. Has the carrier at any time prior to this lawsuit claimed that Mediation Board Case No. A-6755 was completely different from any current matters with which they were dealing with you?

A. I don't believe I understand that.

Mr. CURPHEY: I object to the question for the reason that it is asking for a conclusion on the point at issue.

Mr. LYMAN: I withdraw the question, Mr. Curphey. I will withdraw the question, if I may.

Q. (By Mr. Lyman—Continuing) Mr. Upham, have you

at any time indicated to the carrier that you were claiming that the establishment of a terminal point at Trenton would be in violation of the rules of your current schedule agreement?

A. No.

Q. Did you ever indicate to them that you would strike in opposition to their establishment of such a terminal as being in violation of your current agreements?

A. The only time I would say it could be construed as that was from the meeting of September 16th.

Q. That was this last month, this year?

A. Right.

[129] Q. Now, who attended that meeting?

A. Vice president Burke, Mr. Vane, and myself.

Q. What was the gist of the conversation at that meeting?

A. The conversation—or the gist of it was that if the carrier did not sit down and attempt to come to an agreement and unilaterally put this change into effect, we would have to seek protective conditions for our employees.

Q. Did you explain to the carrier at that meeting the kind of an agreement that you said they would have to put into effect?

A. No; I didn't go into the actual items of the agreement.

Q. Did you refer back to any previous dispute or previous proposed agreements in connection with this conference, Mr. Upham, at that time?

A. We referred back to Mediation Case A-6755.

Q. Did you consider at that conference the proposal that had been made to the carrier in the spring of 1961 during the handling of that case?

A. We—I don't believe we actually brought the agreement out and considered it. We were informing the carrier that we have rights to bargain with them, and the carrier—Mr. Vane—said he didn't think we did have rights to bargain, and he said he was going to go to court.

Q. Did he give any reason for his position that you had no [130] right to bargain?

Mr. CURPHEY: I object to this, your Honor. It is not only hearsay but asking or trying to elicit a legal

opinion supposedly coming from the mouth of an officer of the carrier. It is completely objectionable.

Mr. LYMAN: I don't know what he said.

The COURT: The objection will be overruled.

A. Can I have it again?

(THEREUPON, the last question was read by the Reporter.)

A. Yes. He said that was the carrier's prerogative to establish a terminal anyplace that they wanted to and that it was their right to do so, and that it had nothing to do with the employees or their representatives. It was just strictly a managerial problem.

Q. Had the carrier or any of its representatives previously advanced that argument against your proposals in Case No. A-6755?

A. Not to my knowledge.

Q. Is that the first time that you had met that argument?

[131] A. Yes, sir.

Q. Did you at that conference discuss any specific items of an agreement such as you say you told him you would have to have?

A. No.

Q. You didn't go into the individual items of protective conditions or mileage allowances or one thing or another?

A. No.

Q. When that conference concluded were there any other arrangements for discussion on the subject?

A. No.

Q. Did you participate in any subsequent conferences——

A. No.

Q. (Continuing)—with the carrier on this subject?

A. No.

Mr. LYMAN: Excuse me for a moment, your Honor.

Q. (By Mr. Lyman—Continuing) One more thing I want to clear up for the record, Mr. Upham.

We have had descriptions here today in the testimony about Edison Station and Trenton. Is Edison something

different from Trenton? What is the physical arrangement there?

A. Well, Edison is the station on the Shore Line within the [132] city limits of the City of Trenton, but they are a mile or so down the road. There is another station called Trenton, but they are for the purpose of train orders, crossovers and such as that, but it is all in the immediate area.

Q. Is Edison station the point at which all of these discussions about Trenton have revolved? In other words, was the proposal to establish a terminal there at all times limited to the so-called Edison Station?

A. Yes.

Q. And this other point a mile away that you mentioned was never proposed as a terminal point?

A. No.

Q. And did you sometimes interchangeably refer to this terminal as Edison Terminal or Trenton Terminal?

A. Yes.

Q. Without intending any distinction between the two?

A. Yes.

Mr. LYMAN: That's all, Mr. Upham.

The COURT: Any cross examination, Mr. Curphey?

Mr. CURPHEY: Yes, your Honor.

* * * * *

[133] CROSS EXAMINATION.

By Mr. JOHN M. CURPHEY:

Q. Did I understand you to say, Mr. Upham, that during this conference of September 16th that Mr. Vane for the first time took the position that this was a nonbargainable issue; is that your testimony?

A. Mr. Vane said that he felt that he didn't have to bargain on it.

Q. Yes. He took the position that the carrier had the right to establish this terminal?

A. Yes.

Q. And he had constantly taken that position throughout, had he not?

A. Yes.

Q. And he advised you in writing of that, or Mr. McPhail did on January 6, 1966, did he not?

A. Yes.

Q. And you took the position on the other hand that he had to bargain with you on that, didn't you?

A. Yes, sir.

Q. And the December 16, 1965, memorandum was the specific matter that you had submitted in that connection, isn't that true?

[134] A. Repeat that, please.

Q. The December 16, 1965, memorandum was the specific matter or your specific proposals which you had submitted to the carrier, isn't that true?

A. In connection with the 7711 mediation case.

Q. Well, when you submitted that memorandum, Mr. Upham, you did not refer to that mediation case, did you?

A. Not as a number, no.

Q. It is your testimony that the two matters involved similar subject matter, involving the establishment of a terminal at Trenton?

A. Yes, sir.

Q. But you didn't refer to that mediation case when you submitted it; we understand that?

A. Not by number, no.

Q. And you did not mention the number or reopen the negotiations, did you?

A. No.

Mr. CURPHEY: I believe that's all I have of this witness, your Honor.

The COURT: You may step down, Mr. Upham. You may call your next witness.

Mr. LYMAN: I call Mr. Burke.

* * * * *

Testimony of James E. Burke

[135] THEREUPON, the Defendants called as a witness, JAMES E. BURKE, who, having been previously sworn by the Clerk, testified as follows:

DIRECT EXAMINATION.

By Mr. RICHARD LYMAN:

Q. Mr. Burke, will you state your name and address?

A. James E. Burke, 20874 Bottsford Drive, Farmington, Michigan.

Q. What is your position, Mr. Burke?

A. Vice president of the Brotherhood of Railroad Trainmen.

Q. How long have you held that position?

A. Alternate vice president from January 1, 1965, and vice president since January 1, 1966.

Q. Briefly, what are your duties in that position you hold with the Brotherhood?

A. Primarily to assist the general committees in handling negotiations with the carriers, and other matters related to general committee functions.

Q. In that capacity, Mr. Burke, were you assigned to work with members of your organization on the Detroit & Toledo [136] Shore Line Railroad?

A. I was.

Q. And when was that?

A. I believe it was either in March or April.

Q. Of this year?

A. Of this year.

Q. In the course of that assignment did you become familiar with the matters which have been testified to here today and which you have heard in this courtroom?

A. Yes, I did.

Q. How did you become aware of those matters?

A. Well, I first consulted with general chairman Upham and we had a meeting with Mr. Vane of the carrier, at which time we went over various matters to determine the status of each item, which ones were pending for further work, and what-not.

Q. When was that meeting?

A. I am not certain of the date, but I believe it was in

April. I know it is covered by the carrier's confirming of the conference in May of this year.

Q. I show you what has been introduced into evidence as Defendants' Exhibit WW, Mr. Burke. Is that a copy of that letter?

A. Yes.

Q. Directing your attention to the last paragraph on the [137] second page of that letter. Could you explain what discussions, if any, took place at the conference with respect to the subject matter of that last paragraph?

A. The discussion of this particular matter was primarily between general chairman Upham and Mr. Vane, Mr. Upham broaching the subject of attempting to consummate an agreement for protective conditions in the event the terminal was established at Edison.

I did participate somewhat in the discussion to the point of expressing my views to Mr. Vane, but in view of the—

Mr. CURPHEY: (Interposing) Just a minute. I object to the witness's views.

Mr. LYMAN: I think it is quite relevant to know what he said to Mr. Vane on the subject of this dispute which you are trying to categorize as falling in one subject matter, and we are trying to show a different subject matter.

The COURT: Overruled. He may answer the question.

A. (Continuing) Well, I said to Mr. Vane that in view of the additional mileage and additional expense which would result as a result of this change, we certainly felt that we were entitled to some protective conditions for these employees.

[138] Q. That was in connection with the establishment of a terminal at Trenton?

A. Yes, it was.

Q. Do you recall how this subject matter came up? Did you initiate it or did the carrier initiate it?

A. No. I believe as we went over the other items to line them up for handling in the future general chairman Upham brought up the matter.

Q. Did you discuss this matter in terms of National Mediation Board Case No. A-6755?

A. Not specifically by number, no.

Q. Did you discuss the fact that it had been—or that it was a dispute which had been through the arbitration process without agreement having been reached?

A. At that time I don't recall any mention being made of the processes, but it was very clearly stipulated and agreed by all that this was a pre-existing dispute, something which had not been settled.

Q. Did the carrier at that conference indicate to you and your committee whether they intended to proceed with the establishment of a terminal at Trenton?

A. That has been my understanding right from the very first.

Q. Well, just a minute, Mr. Burke. My question was phrased [139] in terms of whether the carrier communicated something to you at that conference. I think you had better limit your answer to that question.

A. Would you repeat the question?

(THEREUPON, the last question was read by the Reporter, as follows: "Q. Did the carrier at that conference indicate to you and your committee whether they intended to proceed with the establishment of a terminal at Trenton?")

A. I can't say——

The COURT: You can answer that Yes or No.

A. (Continuing) I can't say whether it was stated at that specific meeting; I know it was at other times.

Q. (By Mr. Lyman—Continuing) But you did discuss at that conference the possibility of such a move, and the matter of protecting employees that might be involved in it?

A. Yes.

Q. Now, did you have subsequent conferences with the carrier or communications, to them or from them, dealing with this subject matter?

A. Yes. I believe on August 10th I wrote to Mr. McPhail advising him that in checking the general committee files I [140] found that Mediation Case No. A-6755 was included among my assignments and requested a date for conferences with him.

Q. Is this document which has been introduced in evi-

dence as Exhibit YY, Defendants' Exhibit YY, a true copy of that letter that you wrote to Mr. McPhail?

A. Yes, it is.

Q. Now, as a result of that did you have a conference on Case No. A-6755?

A. Yes. As a matter of fact, that letter was hand delivered to Mr. Vane. As I recall it, it was either on August 10th or on August 11th. Upon delivering the letter to him, we then discussed the situation at Trenton.

Q. Did you deliver it to him personally by hand?

A. I did.

Q. What was the nature of the discussion you had with him at the time of that delivery?

A. It followed the course of the previous discussion to the extent that we restated our position that we were entitled to protective conditions for travel allowances, travel time.

It was also acknowledged during the conversations that the carrier would have to establish the terminal to take care of the Monsanto business, or they were desirous of doing so [141] at least, by October 1, 1966.

Q. And what was the result of the conference? Did an agreement—was an agreement reached as a result of that conference?

A. No. We merely discussed it. The meeting was—it was for another purpose.

Q. Did you have any subsequent meetings and conferences with the carrier on the subject matter of protective conditions in connection with the establishment of a terminal at Trenton?

A. Yes.

Q. When was that?

A. On September 16, 1966.

Q. Would you tell us what the nature of that meeting was? Was it for that specific purpose, Mr. Burke, or did it have to do with other subject matter?

A. It was for that specific purpose, and it was as a result of the letter that I sent requesting a conference date.

Q. When you say "sent" you mean you hand delivered a letter to Mr. Vane?

A. Yes.

Q. Who was present at this later conference?

A. Mr. Vane, general chairman Upham, and myself.

[142] Q. What was the nature of the discussion that went on there at that time?

A. We first advised Mr. Vane that we had Mediation Case No. A-6755, that it was a live issue, and the Mediation Board had exhausted its efforts and withdrawn. We were therefore legally free to strike if the terminal was established without the benefit of an agreement providing for the protective conditions we had been seeking.

We stated that we knew that the carrier contemplated making the change by October 1st, and that we were desirous of consummating an agreement in order to avoid any turmoil or strike activity.

Mr. Vane replied that—well, to the effect that he inquired as to whether or not we had an agreement to propose or discuss. I said that we had nothing in writing, nothing specifically in writing at that time, but that we would have to insist upon the basics of travel allowance, travel expenses, and insurance coverage; that if he were willing to meet with us I had no doubts that the matter could be reconciled.

Mr. Vane then stated that it was the carrier's position—

Mr. CURPHEY: (Interposing) I object to this for the record. It is terribly self-serving, argumentative and prejudicial.

[143] The COURT: You went into these negotiations. Once we get into them, it is hard to say where one stops. I will overrule the objection.

A. (Continuing) Mr. Vane then stated that the carrier was standing by its contentions that they could effect the change without giving us the protective conditions requested; further, that he did not think that our rights under Mediation Case No. A-6755 would allow us to legally strike, because that notice was predicated upon a change to Edison, whereas the change which would be made on the first would be to Trenton.

At that point I told Mr. Vane that—well, first of all, he also advised us that facilities would be provided at Edison which the Trainmen could stay at without cost, thereby

eliminating the necessity of them travelling back and forth from home to Edison during the week.

I stated to Mr. Vane that—that we didn't think our people should live like gypsies, and we didn't agree with his interpretation as to the validity of Mediation Case No. A-6755, and that if the change were placed into effect without the agreement we would exercise our rights through our economic strength.

We then commented to each other that we would next meet on the picket line or in court.

[144] Q. Were there any subsequent meetings on this subject matter prior to the filing of this suit?

A. No, sir.

Q. What did you do, if anything, in connection with this proposal to establish a terminal point at Trenton, as illustrated by the carrier's September 19th bulletin, following the conclusion of this last conference with the carrier, Mr. Burke?

A. We conferred with our legal counsel at the grand lodge headquarters in Cleveland.

Mr. CURPHEY: I object to this.

The COURT: Sustained.

Q. (By Mr. Lyman—Continuing) What action, if any, did you take following this conference, Mr. Burke, in connection with this matter?

A. I wired the president of the Brotherhood requesting strike authority.

Q. Mr. Burke, I show you what has been marked by the Clerk as Defendants' Exhibit BBB. Is that a true copy of the telegram you addressed to President Luna?

A. Yes, it is.

Mr. LYMAN: I offer this in evidence at this time, your Honor.

[145] Mr. CURPHEY: No objection.

The COURT: It will be received in evidence.

Q. (By Mr. Lyman—Continuing) Did you have any further communication with President Luna in response to that telegram?

A. No, sir, I did not. I was in Wisconsin at the time

it was sent, and it was arranged that the—that if the authority, if it would be granted, it would be given directly to general chairman Upham through a telegram.

Q. And subsequent to your sending this telegram, Mr. Burke, have you ever had anything to do with this dispute, other than——

A. No, sir.

Q. (Continuing) —other than in connection with this lawsuit?

A. After it was filed, no.

Mr. LYMAN: Excuse me for just a moment, if your Honor please.

(THEREUPON, Mr. Lyman conferred off the record with cocounsel.)

Mr. LYMAN: (Continuing) I think that's all we have with this witness, your Honor.

The COURT: Cross examine.

* * * * *

[146] CROSS EXAMINATION.

By Mr. JOHN M. CURPHEY:

Q. Now, Mr. Burke, with reference to this conference you had in May—you were uncertain as to the date—that was with reference to the number of the pending disputes?

A. Yes.

Q. Was this your first conference with representatives of the carrier, when you had this position as to a large docket?

A. I believe it was; I couldn't say for a certainty, though.

Q. Had you reviewed your file prior to the May conference, or whenever it was, as to pending disputes?

A. Yes. I had Upham clarify for me what matters were to be handled and in what sequence.

Q. And Exhibit WW, to which you referred, was a letter addressed to you from Mr. McPhail of the carrier summarizing a number of the matters discussed during that conference in May, is that true?

A. Yes.

Q. And there were a number of disputes discussed in

this letter, were there not? In fact, there are five or six or seven different matters discussed?

A. That's right.

[147] Q. Now, there is no reference in this letter to Mediation Case No. A-6755, is there?

A. Not by number, no.

Q. There is a reference in the last paragraph to the matter of establishing a terminal at Edison, isn't there?

A. Yes, there is.

Q. And you hadn't requested a conference at that time on that mediation case, had you?

A. No, we hadn't.

Q. And you then knew, subsequent to that conference anyway or after you received this letter, that the carrier intended to establish a terminal at Edison; isn't that a fact, Mr. Burke?

A. Yes, I knew they had such intentions.

Q. In fact, Mr. McPhail had written you a letter and told you that, hadn't he?

A. Yes.

Q. And knowing that fact, Mr. Burke, you then wrote this letter of August 10th requesting a conference on Mediation Case No. 6755, didn't you?

A. Yes.

Q. And there hadn't been any conference on that matter for over three and a half years, had there, as such?

A. As such, no; not to my knowledge, anyhow.

[148] Q. Well, your file didn't disclose any, is that true?

A. True.

Q. And you attempted at that time to justify any strike by that mediation case, didn't you?

A. A strike in relation to the failure to consummate an agreement providing for the protective agreement if the terminal were established, yes.

Q. Yes. And that was the purpose for that letter, wasn't it, Mr. Burke?

A. Yes.

Mr. CURPHEY: That's all I have of this witness, your Honor.

The COURT: Redirect?

Mr. LYMAN: Yes, your Honor, just a few questions.

* * * * *

[149] REDIRECT EXAMINATION.

By Mr. RICHARD LYMAN:

Q. Mr. Burke, you didn't indulge in any correspondence or telegram communications for the express purpose of setting up your right to have a strike, did you?

A. I don't quite understand your question.

Q. Well, I don't know whether you quite understood Mr. Curphey's last question to you, but the implication in it was that you wrote a letter for that purpose, that by writing the letter you would establish your right to have a strike.

Did you have any such intention in mind when you wrote that letter?

A. No. In my opinion we had the right to strike the minute the Mediation Board terminated its services.

Mr. LYMAN: That is all.

Mr. CURPHEY: That's all.

The COURT: You may stand down, Mr. Burke.

* * * * *

Mr. LYMAN: Your Honor, that concludes the defendants' case. I understand all the [150] exhibits have been admitted.

The COURT: They have all been received with the exception of the one, on which I reserved my ruling.

Does the plaintiff desire to offer evidence in rebuttal?

Mr. CURPHEY: No, your Honor.

The COURT: Does the plaintiff rest at this time?

Mr. CURPHEY: Yes, your Honor.

The COURT: What about argument on this matter? I am wondering about this: If it suits the convenience of counsel, it might be more desirable to continue the case over until morning for argument because there is much documentary material the Court ought to go through. I think argument would be more meaningful if I had the opportunity to do that.

Mr. LYMAN: I agree.

Mr. CURPHEY: I agree with that.

The COURT: Then we will recess until nine o'clock tomorrow morning.

* * * * *

PLAINTIFF'S TRIAL EXHIBITS *

Letter, General Chairmen to McPhail, 4/28/61 (Pl. Ex. 1)

Toledo, Ohio
April 28, 1961

Mr. C. J. McPhail, Asst. General Manager
Detroit and Toledo Shore Line Railroad
4820 Schwartz Road
Toledo 11, Ohio

Dear Sir:

We the undersigned herewith serve formal Section Six Notice under the provisions of our respective agreements and the Railway Labor Act to negotiate an agreement to cover working conditions for the employes represented by our respective organizations in order to cover conditions involved by contemplated changes of working conditions in setting up tie up point.

Yours truly

/s/ WARREN F. ROSCOE
Vice Chairman
General Chairman ORC&B

/s/ D. K. BILGER
General Chairman BRT

/s/ E. F. GENSLER
General Chairman BLF&E

cc: W. P. Kennedy, Pres., BRT
J. A. Paddock, Pres., ORC&B
H. E. Gilbert, Pres., BLF&E
F. A. Collin, Vice Pres., BRT

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* Received in evidence, p. 68, *supra*.

Plaintiff's Trial Exhibits

Letter, General Chairmen to McPhail, 6/8/61 (Pl. Ex. 2)

Toledo, Ohio
June 8, 1961.

Mr. C. J. McPhail
Assistant General Manager
Detroit & Toledo Shore Line R.R. Company
4820 Schwartz Road
Toledo 11, Ohio

Dear Sir:

Enclosed will be found our written proposal referred to in your letter of May 29, 1961 affirming the recess requested in conference of May 23rd when handling our Section 6 Notice dated April 28, 1961.

In furtherance of negotiations covering contemplated change of terminal for Trains 401-402 and 407-408 from Lang to Edison, we will be available to meet with you at an early date if you will suggest same.

Kindly acknowledge receipt.

Yours truly,

/s/ W. R. Suzor
General Chairman ORC&B

/s/ D. K. Bilger
General Chairman BRT

/s/ E. F. Gensler
General Chairman BLF&E

Plaintiff's Trial Exhibits

Written Proposal, 6/8/61 (Pl. Ex. 3)

WHEREAS the parties hereto desire to change the present Home Terminal of Trains 401-402 and 407-408 from Lang and operate them out of Edison; it is hereby agreed that:

Section 1:

(a) Trains 401-402 and 407-408 will operate daily to perform industrial switching at points between Rockwood and Trenton.

(b) Whenever required to perform services other than exclusive industrial switching these employees will be paid a minimum day for each additional kind or type of service without deduction from any other earnings of their trip or tour of duty.

(c) Through and irregular freight, work, wreck, construction and circus trains will not be required to handle or make set-off or pick-up of cars at any point between Rockwood and Trenton or either named station. If required to do so they will be paid an additional minimum day without deduction from any other earnings of their trip or tour of duty.

(d) Train service employees will not be required to move or spot engines for fuel, sand, water, or exchange for another engine. Neither will they be required to place supplies of any kind on engines; lock up or unlock engine cabs or shut down or start up or watch same; or do any cleaning of any kind of engines or rest quarters. If required to perform any of these services they will be paid not less than a minimum day in addition to and without deduction from any other earnings of their trip or tour of duty.

(e) Each train crew shall consist of not less than one (1) Engineer; one (1) Fireman; one (1) Conductor; and two (2) Trainmen-Helpers, and these assignments will not be changed, abolished, or substituted by other titles, or the number increased or reduced except by mutual consent of the parties signatory hereto.

(f) Adequate quarters and facilities for the employees to obtain rest, food, storage lockers, etc., will be made available by the company in Edison Station Office Building.

(g) Hostlers shall be employed at Edison on any shift where the servicing of engines is necessary and required.

Section 2:

(a) When no bids are received for any regular assignment established at Edison the position will be filled from the extra board maintained at Lang under the same conditions pertaining to filling of other vacancies at outside points.

(b) An employee not bidding for a regular position established at Edison shall not be compelled to take it and will not lose his rights to other positions or assignments for which he may otherwise be qualified.

(c) No new employees will be hired, or extra boards established at Edison without agreement having first been reached between the affected parties, and consented to by the parties signatory hereto.

(d) Employees from Lang used to fill vacancies or assignments at Edison will be paid deadhead mileage and reimbursed for automobile transportation costs at the mileage rate allowed by the company to its officials and employees.

Section 3:

(a) Employees who accept regular assignments when established at Edison and desire to move their place of residence to within ten (10) miles of this point, will be assured by the company against any loss resulting from lease terminations, sale of their homes, etc., provided,

1. The employee accepting a regular assignment notifies the company within six-(6)-months thereafter that he intends to move from his current location at the time to this new location and does so move.
2. If the employee cannot make a satisfactory disposition of his lease, or sale of his property, it will be appraised for its value by an appraiser agreed upon by the employee and the company, whose services will be paid for by the company. If the property is sold or disposed of for the amount of such appraised value or more, the company liability in this connection will

have been made. If not sold or disposed of for the appraised value, the company shall have the option to purchase such property from the employee at the appraised value, or the company may reimburse the employee for the difference between such appraised value of his property and the amount the property is sold for, but no such sales will be made until the company shall have had the option limited to thirty (30) days to exercise same.

(b) Employees who move within ten (10) miles of Edison will be given reasonable assistance by the company in locating new homes or places of residence in this area and the company will defray the cost of moving their household goods in an amount not to exceed $200.00.

(c) Provisions of existing agreements not in direct conflict herewith will continue in full force and effect until changed, revised, cancelled or amended in pursuance of the terms of such agreements.

(d) This agreement shall continue in effect until changed, amended or cancelled in accordance with provisions of the Railway Labor Act as amended.

For the Order of Conductors and Brakemen

/s/ W. R. Suzor
General Chairman

For the Brotherhood of Railroad Trainmen

/s/ D. K. Bilger
General Chairman

For the Brotherhood of Locomotive Firemen and Enginemen

/s/ E. F. Gensler
General Chairman

For the Detroit and Toledo Shore Line Railroad Company

____ ____
Assistant General Manager

Committee Proposition No. 1
Submitted—June 8, 1961

Plaintiff's Trial Exhibits

Letter, NMB to McPhail, Gilbert and Luna, 4/3/63 (Pl. Ex. 4)

NATIONAL MEDIATION BOARD
Washington

April 3, 1963
Case No. A-6755.

Mr. C. J. McPhail
Assistant General Manager
The Detroit & Toledo Shore Line RR Co.
4820 Schwartz Road
Toledo, Ohio

Mr. H. E. Gilbert, President
Brotherhood of Locomotive Firemen & Enginemen
318 Keith Building
Cleveland 15, Ohio

Mr. Charles Luna, President
Brotherhood of Railroad Trainmen
Standard Building
Cleveland 13, Ohio

Gentlemen:

Reference is made to dispute between your respective carrier and organizations, in which mediation services of the Board was invoked by the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Railroad Trainmen, described as follows:

> Request of organization to negotiate an agreement to cover working conditions for employees to cover conditions involved by contemplated change in setting up tie-up point."

For your information, the file in this case was closed on April 3, 1963 account of the employees' and carrier's refusal to arbitrate.

Very truly yours,

[Signed]
E. C. THOMPSON
Executive Secretary

Plaintiff's Trial Exhibits

Special Board Award, 11/30/65 (Pl. Ex. 5)

SPECIAL BOARD OF ADJUSTMENT NO. 375

Award No. 21
Case No. 21

Parties To Dispute:
The Brotherhood of Locomotive Firemen and Enginemen
The Detroit and Toledo Shore Line Railroad Company

Statement of Claim:

"Formal protest of Bulletin No. 1192, dated September 24, 1963, wherein the Carrier advertises a Work Train to operate out of Dearoad, contrary to agreement and all practices of the past.

"In connection therewith, also accept this as a Committee claim on behalf of all enginemen for any loss sustained thereunder, should the aforementioned bulletin be placed in effect."

Findings:

What took place here was not a change in the recognized terminal, but simply amounted to an outlying assignment. There is nothing in the rules of agreement which precludes this carrier from establishing an outside assignment.

The employes laid particular stress on their Exhibit 8, but close examination of same does not indicate to the majority that the Carrier limited itself with respect to establishing outside assignments. Said Exhibit 8 reflects that a limited agreement between the parties to set-up a five-day assignment at a date prior to the five-day work week was effectuated.

Award:

The claim is denied.

/s/ DAVID R. DOUGLASS, *Neutral Member*

/s/ C. J. MCPHAIL,
Carrier Member

/s/ D. C. DEERING,
Employe Member
(I dissent)

Detroit, Michigan—November 30, 1965

Plaintiff's Trial Exhibits

Bulletin, 9/19/66 (Pl. Ex. 15)

THE DETROIT AND TOLEDO SHORE LINE RAILROAD COMPANY
Bulletin # 1536

Enginemen
Hostlers
Conductors
Trainman
Foreman
Helpers

Lang, Ohio
September 19, 1966.

Effective Monday, September 26, 1966 Trains 801-802 will be established to operate out of Edison on a Daily Basis.

Train and engine crew to report for duty at 8.00 Am.

Train will operate to perform industry and station switching between Dearoad and Greenings.

Home Terminal is designated as Edison.

Bids account this establishment will be received until 10.00 Am Sunday September 25, 1966.

Assignment will be effective at 12.01 Am September 26, 1966.

Road and Yard Book
Hostlers
Dearoad
Mr R A Altmeier
Mr D G Vane
Mr L Sabo
Mr A Zimmerman
Mr F Bette
Mr Chas L Border
Mr R D Curry
Mr H D Hulquist
Mr E F Gensler Actg Gen'l Chairman 2
Mr J Wulf Gen'l Chairman
Mr W Upham Gen'l Chairman
CC Dispatchers
CC Yardmasters

CHAS L BORDER
Terminal Trainmaster
C R C

Plaintiff's Trial Exhibits

Letter, Rancich to McPhail, 1/27/66 (Pl. Ex. 16)

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN

January 27, 1966

Mr. C. J. McPhail, General Manager
Detroit & Toledo Shore Line RR.
131 West Lafayette Ave
Detroit, Michigan 48226

Dear Sir:

Pursuant to the provisions of Section 6 of the Railway Labor Act, as amended, and our currently effective Article 41 of the schedule, request is herewith made to open our agreement to the extent as follows,

Article 3—Paragraph A reading. . . .

"Through freight runs between Lang and Dearoad, Lang and West Detroit or other points within the Detroit Terminal District will be turnaround runs, with Lang as the home terminal."

to be changed as follows. . . .

All road service runs and/or assignments will originate and terminate at Lang yard (Toledo, Ohio) for enginemen. Lang yard is understood to mean the present switching limits.

Kindly acknowledge receipt hereof within ten days setting date, time, and place for conference.

Yours Truly,

/s/ F. L. RANCICH
General Chairman B.L.F.&E.

cc H. E. Gilbert

Plaintiff's Trial Exhibits

Letter, NMB to McPhail and Gilbert, 6/28/66 (Pl. Ex. 17)

NATIONAL MEDIATION BOARD
Washington, D.C. 20572

June 28, 1966
Case No. A-7839.

Mr. C. J. McPhail, General Manager
The Detroit & Toledo Shore Line Railroad Company
131 West Lafayette Avenue
Detroit, Michigan 48226

Mr. H. E. Gilbert, President
Brotherhood of Locomotive Firemen & Enginemen
15401 Detroit Avenue
Cleveland, Ohio 44107

Gentlemen:

Reference is made to application for the mediation services of this Board, in a dispute between your respective carrier and organization, described as follows:

"Section 6 notice of January 27, 1966 requesting revision of Article 3 of the current schedule agreement."

Attached for Mr. Gilbert's information is a copy of a letter addressed to the Board dated June 24, 1966 from Mr. C. J. McPhail.

This application has been docketed as our Case No. A-7839 and will hereafter be referred to by that number. A mediator will be assigned to mediate this dispute consistent with prior commitments.

Very truly yours,

[Signed]
THOMAS A. TRACY
Executive Secretary

Plaintiff's Trial Exhibits

Letter, Deering to McPhail, 9/10/65 (Pl. Ex. 18)

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN

DEL C. DEERING
Vice President

September 10, 1965

Mr. C J McPhail
General Manager, D.&T.S.L. Ry.
131 West Lafayette Ave.
Detroit, Michigan

Re: NMB Case A-6755, BLF&E
Section 6 Notice of April 28, 1961

Dear Mr. McPhail:

As you know efforts were made recently, the last date being September 9, to settle this entire matter by negotiating an agreement to start and tie-up a local freight run at Edison (Trenton), Michigan, but without prejudice to either party's right to the contrary. However, we could not get together and accordingly I advised you that we were closing the file on this case, and would also notify the NMB to that effect; but this action on our part was with the understanding that Case No. 21 now in SBA will in all probability settle the issue of starting and tieing up a crew at other than Lang Yard.

In view of the above, Case A-6755 (Our Section 6 Notice of April 28, 1961) is considered closed with the distinct understanding it is without prejudice to the position of the employees and can not be used against the employees in any other case for reference purposes involving terminal changes.

The above for your information, I am

Your very truly,

/s/ D. C. DEERING

cc: F. Rancich, GC

DEFENDANTS' TRIAL EXHIBITS *

Letter, McPhail to Rancich, 2/4/66 (Def. Ex. B)

THE DETROIT AND TOLEDO SHORE LINE RAILROAD COMPANY
131 West Lafayette Avenue
Detroit, Michigan 48226

C. J. McPHAIL
General Manager

February 4, 1966
File: TC 75

Mr. F. L. Rancich, General Chairman
Brotherhood of Locomotive Firemen & Enginemen
2022 Brussels Street
Toledo, Ohio—43613

Dear Sir:

This will acknowledge receipt of your Section 6 notice dated January 27, 1966, to modify current schedule rules, specifically Article 3 (a) to read:

> "All road service runs and/or assignments will originate and terminate at Lang Yard (Toledo, Ohio) for enginemen. Lang Yard is understood to mean the present switching limits."

By mutual agreement initial meeting on this Section 6 notice was held at 10:00 A.M. on February 2, 1966. Discussion did not result in any solution acceptable to both parties. It was the Carrier's position that such a rule would be too restrictive in our operations and the requested change was not acceptable.

You were also informed at this meeting that the Carrier reserves the right to serve Section 6 notices of its own to be handled concurrently with your Section 6 notice of Janu-

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* Received in evidence, p. 82, *supra*.

ary 27, 1966, and you stated it was your position that any Carrier Section 6 notice must be handled separately and apart from the organization's notice.

Yours truly,

/s/ C. J. McPhail
General Manager

Defendants' Trial Exhibits

Letter, Rancich to McPhail, 2/5/66 (Def. Ex. C)

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN

February 5, 1966

Mr. C. J. McPhail, General Manager
Detroit & Toledo Shore Line RR.
131 West Lafayette Ave.
Detroit, Michigan 48226

Dear Sir:

This will acknowledge yours of February 4, 1966 relating to our Section 6 notice dated January 27, 1966.

This is to advise, in the conference on this Section 6 notice held February 2, 1966 it was the carriers position that the change is unacceptable, therefore, conferences on this notice are terminated.

Additionally, the Railway Labor Act specifically sets forth the procedure for effecting a change in the rates of pay, rules and working conditions, and in this connection, we once again advise that any carrier Section 6 notice will be handled separately and apart from the organization notice.

Kindly acknowledge receipt.

Yours truly,

/s/ F. L. RANCICH
General Chairman BLF&E

cc H. E. Gilbert Pres-BLF&E

Defendants' Trial Exhibits

Letter, McPhail to Rancich, 2/14/66 (Def. Ex. E)

THE DETROIT AND TOLEDO SHORE LINE RAILROAD COMPANY
131 West Lafayette Avenue
Detroit, Michigan 48226

C. J. McPHAIL
General Manager

February 14, 1966
File: TC-75

Mr. F. L. Rancich, General Chairman
Brotherhood of Locomotive Firemen & Enginemen
2022 Brussels Street
Toledo, Ohio—43613

Dear Sir:

This will acknowledge receipt of your letter dated February 5, 1966, having reference to your Section 6 notice dated January 27, 1966, to modify current schedule rules to provide, in part:

> "All road service runs and/or assignments will originate and terminate at Lang Yard (Toledo, Ohio) for enginemen. Lang Yard is understood to mean the present switching limits."

You state in the second paragraph of your letter that following initial conference on February 2, 1966, you consider conferences on this notice as terminated.

We did not have an opportunity in the initial conference to express fully our position with regard to this notice. Your notification of conference termination is accepted with the understanding that it is the Carrier's position that the said notice is non-bargainable, and the rule requested is outside the ambit of the Railway Labor Act. It is an attempt to take away managerial rights which the Carrier feels are inherent to it, and which are not subject to negotiation.

Under the Railway Labor Act the Carrier has a mandate to provide public transportation in the most economical and

efficient maner, and must maintain certain rights which are not subject to negotiation in order to provide that it may so operate. Your Section 6 notice of January 27, 1966, as cited above, attempts to interfere with these rights by placing an undue restriction upon the managerial functions, and on this basis must be rejected.

Yours truly,

Original Signed

C. J. McPhail
General Manager

Bulletin, 5/26/66 (Def. Ex. F)

THE DETROIT AND TOLEDO SHORE LINE RAILROAD COMPANY

Bulletin # 1510

Lang, Ohio
May 26, 1966

Enginemen
Hostlers
Conductors
Trainman
Foreman
Helpers

Effective Thursday, June 2, 1966, the following Local Train will be established to operate out of Edison.

Train, 801 on duty 6.00 Am, to work daily except Sunday.

Effective Wednesday, June 1, 1966, the following Local Train will be established to operate out of Edison

Train, 803, on duty 5.00 Pm, to work daily except Sunday.

These trains will normally operate to perform Local service between Greenings and Dearoad.

Road switcher rate will be applicable for Trainman on these assignments.

Bids account establishment of these trains will be received until 10.00 Am, Tuesday, May 31, 1966.

Assignment will be effective at 12.01 Am, Wednesday June 1, 1966.

Yard & Road Book
Hostlers
Dearoad
Mr R A Altmeier
Mr L Sabo
Mr A Zimmerman
Mr F Bette
Mr Chas L Border
Mr R D Curry
Mr F Rancich Gen'l Chairman 2

Mr J Wulf Gen'l Chairman
Mr W Upham Gen'l Chairman
CC Dispatchers
CC Yardmasters

CHAS L BORDER
Terminal Trainmaster
C R C

Telegram, Gilbert to NMB, 5/27/66 (Def. Ex. G)

[Caption of Western Union Form Omitted.]

May 27, 1966

T A Tracy
National Mediation Board
Washington, D C

Services of NMB requested in BLF&E dispute Detroit & Toledo Shore Line RR re assignment of two jobs to start at Edison Yard formerly identified as NMB Case A-6755. Section 6 Notice dated January 27, 1966 has been served and carrier proposes to institute changes 6:00 PM, June 1. Formal application for services of NMB will follow via U S Mail. Request carrier's attention be directed to status quo provisions of RLA. Please advise.

H E GILBERT

HLE:lp 4:35 PM

cc J W Jennings E F Gensler

Defendants' Trial Exhibits

Letter, McPhail to General Chairmen, 6/10/66 (Def. Ex. H)

THE DETROIT AND TOLEDO SHORE LINE RAILROAD COMPANY
131 West Lafayette Avenue
Detroit, Michigan 48226

C. J. McPHAIL
General Manager

June 10, 1966
File: 59.9

Mr. John Wulf, Acting General Chairman
Order of Railway Conductors & Brakemen
2025 West Territorial Road
Battle Creek, Michigan

Mr. Wm. Upham, General Chairman
Brotherhood of Railroad Trainmen
2528 Luddington Drive
Toledo, Ohio—43615

Mr. F. L. Rancich, General Chairman
Brotherhood of Locomotive Firemen & Enginemen
2022 Brussels Street
Toledo, Ohio—43613

Gentlemen:

Recently this Carrier was requested by the Monsanto Chemical Company to prepare to resume switching service of that plant at Trenton effective June 1, 1966.

On the basis of this request, it was determined that the Carrier would need to operate two additional road assignments in order to handle the industrial switching at this point. Consequently, bulletins were issued establishing two new assignments to originate and terminate at Trenton, Michigan, with Trenton being the home terminal for such crews at an outlying terminal.

However, prior to June 1, 1966, the Carrier was notified that the plans were changed and it would not be necessary to commence switching the Monsanto Chemical Company on that date. As a result of the change in plans, the bulletins were cancelled and the establishment of the assignments was withdrawn due to there being no longer a necessity for such assignments.

This letter, therefore, is simply of an informative nature to advise the assignments were cancelled only because the request for service by Monsanto was likewise cancelled.

As you know, however, we are, by agreement, scheduled to resume switching at Monsanto on October 1, 1966, and under the provisions of the agreements in effect, we contemplate the establishment of assignments to originate and terminate at Trenton on that date, with welfare and bunkroom facilities to be constructed to accommodate employes who will go on duty and tie-up at that point.

Yours truly,

Original Signed
C. J. McPhail
General Manager

Defendants' Trial Exhibits

Letter, NMB to Gilbert, 6/1/66 (Def. Ex. I)

NATIONAL MEDIATION BOARD
Washington, D.C. 20572

June 1, 1966

Mr. H. E. Gilbert, President
Brotherhood of Locomotive Firemen
and Enginemen
15401 Detroit Avenue
Cleveland, Ohio 44107

Dear Mr. Gilbert:

Reference is made to the telegraphic application received from the Brotherhood of Locomotive Firemen and Enginemen for the mediation services of this Board in a dispute involving Detroit and Toledo Shore Line Railroad Co., on the subject of Section 6 notice dated January 27, 1966.

I am attaching hereto copy of a telegram received in this office June 1, 1966, from Mr. C. J. McPhail, General Manager, of the Detroit and Toledo Shore Line Railroad Co., in regard to this application.

In your wire of May 31, 1966, you referred to NMB Case A-6755. Our records indicate that this case was closed April 3, 1963, on the basis of refusal to arbitrate by both parties.

Further action on this matter will be deferred pending receipt of the formal application from your office.

Very truly yours,

[Signed]
THOMAS A. TRACY
Executive Secretary

cc: Mr. C. J. McPhail, General Manager
Detroit and Toledo Shore Line Railroad Co.
131 West Lafayette Avenue
Detroit, Michigan

Defendants' Trial Exhibits

Telegram, McPhail to NMB, 6/1/66 (Def. Ex. J)

RDA005 856A EDT JUN 1 66 NHCO20 SPOC 143
TQLDEA319 DE LLQ250 PD 2 EXTRA DETROIT MICH 31 728P
EST T A TRACY, EXECUTIVE SECRETARY, NATIONAL MEDIATION BOARD WASH DC

RETEL MAY 31 REQUEST FOR BOARD SERVICE DISPUTE WITH D AND TSL RAILROAD AND BLFE REFERENCE ASSIGNMENT TWO JOBS AT EDISON. CARRIER NOT ESTABLISHING JOBS JUNE FIRST. SECTION SIX NOTICE OF BLFE JANUARY 27 1966 CONFERENCES TERMINATED BUT CARRIER HAS RIGHTS UNDER AGREEMENT TO ESTABLISH JOBS INVOLVED THEREFORE STATUS QUO PROVISION NOT RESTRICTIVE TO SUCH CARRIER ACTION

C J MCPHAIL GENERAL MANAGER D & TSL RAILROAD

(48).

Defendants' Trial Exhibits

Letter, Gilbert to NMB, 6/17/66 (Def. Ex. L)

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN
Cleveland, Ohio

H. E. GILBERT
President

June 17, 1966

Mr. Thomas A. Tracy
Executive Secretary
National Mediation Board
Washington, D. C. 20572

Dear Mr. Tracy:

Attached as indicated by telegram dated May 27, ar NMB Forms—2 requesting the services of the Nationa Mediation Board under Section 5 First of the Railwa Labor Act in a dispute between the BLF&E and manage ment of the Detroit & Toledo Shore Line Railroad de scribed in brief as follows:

> "Section 6 Notice of January 27, 1966, requesting revi sion of Article 3 of the current schedule agreement."

Parties have met in numerous conferences without re solving the issues and it is respectfully requested that NM promptly docket the above-described controversy and as sign a mediator to handle.

This will also acknowledge receipt of your June 1 lette and attachment in connection with the above-describe matter.

Please advise.

Very truly yours,

/s/ H. E. GILBERT

Attachment

cc: J. W. Jennings, VP, BLF&E
E. F. Gensler, AGC—D&TSL, BLF&E

Defendants' Trial Exhibits

Letter, Tracy to McPhail and Gilbert, 6/28/66 (Def. Ex. M)

NATIONAL MEDIATION BOARD
WASHINGTON, D.C. 20572

June 28, 1966
Case No. A-7839

Mr. C. J. McPhail, General Manager
The Detroit & Toledo Shore Line Railroad Company
131 West Lafayette Avenue
Detroit, Michigan 48226

Mr. H. E. Gilbert, President
Brotherhood of Locomotive Firemen & Enginemen
15401 Detroit Avenue
Cleveland, Ohio 44107

Gentlemen:

Reference is made to application for the mediation services of this Board, in a dispute between your respective carrier and organization, described as follows:

> "Section 6 notice of January 27, 1966 requesting revision of Article 3 of the current schedule agreement."

Attached for Mr. Gilbert's information is a copy of a letter addressed to the Board dated June 24, 1966 from Mr. C. J. McPhail.

This application has been docketed as our Case No. A-7839 and will hereafter be referred to by that number. A mediator will be assigned to mediate this dispute consistent with prior commitments.

Very truly yours,

[Signed]
THOMAS A. TRACY
Executive Secretary

Defendants' Trial Exhibits

Telegram, Gilbert to Tracy, 9/23/66 (Def. Ex. N)

[Caption of Western Union Form omitted.]

September 23, 1966

Mr T A Tracy, Secretary
National Mediation Board
Washington, DC

Re my telegram September 20 NMB Case A-6755 Detroit & Toledo Shore Line Ry. Reference should have been made to Case A-7839 docketed by NMB June 28, 1966. Request mediator be assigned promptly to Case A-7839. Please advise.

H. E. GILBERT

HLE:1p 3:30 PM

CC E F Gensler

Defendants' Trial Exhibits

Letter, Tracy to Gilbert, 9/26/66 (Def. Ex. O)

NATIONAL MEDIATION BOARD
Washington

September 26, 1966

Mr. H. E. Gilbert, President
Brotherhood of Locomotive Firemen and Enginemen
15401 Detroit Avenue
Cleveland, Ohio 44107

Dear Mr. Gilbert:

This will acknowledge your telegram of September 26th, as well as your letter of September 23, 1966, which referred to NMB Case A-7839.

Your request that a mediator be assigned to this case promptly has been noted and we will endeavor to comply with your request as soon as possible.

Very truly yours,

[Signed]
THOMAS A. TRACY
Executive Secretary

cc: Mr. C. J. McPhail, General Manager
The Detroit & Toledo Shore Line RR Co.

Defendants' Trial Exhibits

Letter, Cool to General Chairmen, 2/21/61 (Def. Ex. AA)

Lang, Ohio
February 21, 1961

Mr. W. Suzor,
Gen'l. Chairman, ORC

Mr. E. F. Gensler,
Gen'l. Chairman, BLF&E

Mr. D. K. Bilger,
Gen'l. Chairman, BRT

Gentlemen:

In view of the drastic drop in revenue it is necessary that our operating expenditures be reduced. As a step in that direction it is our intention to discontinue operation of trains 401-402 and 407-408 out of Lang and operate them out of Edison.

The purpose of this letter is to inquire as to the minimum requirements regarding facilities for your members going on duty and relieving at this station.

Please acknowledge this letter.

Yours truly,

/s/ B. T. Cool
Superintendent

BTC:ol

cc—Mr. C. J. McPhail

Defendants' Trial Exhibits

Letter, McPhail to General Chairmen, 5/29/61 (Def. Ex. DD)

May 29, 1961
File 522.33

Mr. W. Suzor
Gen'l. Chairman, O.R.C.
Box 13
Samaria, Michigan

Mr. D. K. Bilger
Gen'l. Chairman, B.R.T.
5229 Hammond Dr.
Toledo 11, Ohio

Mr. E. F. Gensler
Gen'l. Chairman, B.L.F.E.
3713 Upton Avenue
Toledo 12, Ohio

Gentlemen:

Referring to joint conference held on May 23, 1961 in connection with Section 6 Notice dated April 28, 1961 served on the carrier by each of you as representatives of your respective organizations for the purpose of negotiating an agreement to cover working conditions involved by contemplated change in tie up point.

This will confirm carrier's affirmative reply to your request for recess of conference to permit preparation of written proposal to cover contemplated change, with the understanding carrier will not progress plans, for the present, pending receipt of such proposal.

Yours truly,

/s/ C. J. McPhail

CJM/mb

Letter, McPhail to General Chairmen, 6/14/61 (Def. Ex. GG)

June 14, 1961
522.33

Mr. W. Suzor
Gen'l. Chairman, O.R.C.
Box 13
Samaria, Michigan

Mr. D. K. Bilger
Gen'l. Chairman, B.R.T.
5229 Hammond Dr.
Toledo 11, Ohio

Mr. E. F. Gensler
Gen'l. Chairman, B.L.F.E.
3713 Upton Avenue
Toledo 12, Ohio

Gentlemen:

This will acknowledge receipt of your proposal attached to your letter of June 8, 1961 to cover the contemplated change of terminal for Trains 401-02 and 407-08, requested in your Section 6 Notice of April 28, 1961.

It is the opinion of the Carrier that the proposal as presented is far beyond even a reasonable approach to an acceptable agreement.

Because of the apparent lack of a common ground for further negotiation, this is to advise your joint proposal is not acceptable.

Yours truly,

/s/ C. J. McPhail

CJM/mb

Defendants' Trial Exhibits

Letter, McPhail to General Chairmen, 6/5/62 (Def. Ex. HH)

THE DETROIT AND TOLEDO SHORE LINE RAILROAD COMPANY
Office of Assistant General Manager
4820 Schwartz Road

C. J. McPHAIL
Assistant General Manager

June 5, 1962
Toledo 11, Ohio
522.33

Mr. W. Suzor
General Chairman, O.R.C.
Box 13
Samaria, Michigan

Mr. D. K. Bilger
General Chairman, B.R.T.
5229 Hammond Drive
Toledo 11, Ohio

Mr. E. F. Gensler
General Chairman, B.L.F.&E.
3713 Upton Avenue
Toledo 12, Ohio

Gentlemen:

Referring to the initial and subsequent conferences held in connection with your joint Section 6 Notice dated April 28, 1961, requesting agreement to cover anticipated changes in working conditions for employes represented by your respective organizations brought about by our contemplated establishment of an out-lying terminal or tie-up point.

As indicated to you in letter dated June 14, 1961, your joint proposal was not acceptable. Subsequent negotiations on May 18, 1962 did not produce any further mutual understanding of the Carrier's intention to establish an out-lying terminal.

Without prejudice to the position of the Carrier that ther is nothing in the agreement prohibiting or restricting estab lishment of home terminals for local or road switcher serv ice at points other than Lang, there appears to be n ground on which to further negotiate your Section 6 Notic and accordingly, therefore, please consider negotiation terminated.

Yours truly,

/s/ C. J. McPhail

CJM/mb

Defendants' Trial Exhibits

Letter, McPhail to NMB, 2/8/63 (Def. Ex. PP)

THE DETROIT AND TOLEDO SHORE LINE RAILROAD COMPANY
Office of Assistant General Manager
4820 Schwartz Road

C. J. McPHAIL
Assistant General Manager

February 8, 1963
Toledo 11, Ohio

Dear Mr. Thompson:

Referring to your letter of January 29, 1963, concerning Case No. A-6755, covering dispute between this carrier, the Brotherhood of Railroad Trainmen and the Brotherhood of Locomotive Firemen & Enginemen as follows:

> "Request of organization to negotiate an agreement to cover working conditions for employees to cover conditions involved by contemplated change in setting up tie-up point."

Your attention is invited to the notice quoted above as referring to a "contemplated change in setting up tie-up point." This carrier is no longer contemplating a change in setting up a tie-up point that was used as the basis of the organizations' Section 6 Notice. The problem, therefore, is moot; and accordingly arbitration, insofar as this carrier is concerned, is also moot.

We are not agreeable to submitting the controversy to arbitration.

Yours truly,

/s/ C. J. McPHAIL

CJM/mb

MR. E. C. THOMPSON
Executive Secretary
National Mediation Board
7th Floor—National Rifle Assn. Bldg.
1230 16th St., N.W.
Washington 25, D.C.

Defendants' Trial Exhibits

Letter, NMB to McPhail, Gilbert and Luna, 3/4/63 (Def. Ex. RR)

NATIONAL MEDIATION BOARD
Washington

March 4, 1963
Case No. A-6755

Mr. C. J. McPhail
Assistant General Manager
The Detroit & Toledo Shore Line RR Co.
4820 Schwartz Road
Toledo, Ohio

Mr. H. E. Gilbert, President
Brotherhood of Locomotive Firemen & Enginemen
318 Keith Building
Cleveland 15, Ohio

Mr. Charles Luna, President
Brotherhood of Railroad Trainmen
Standard Building
Cleveland 13, Ohio

Gentlemen:

We have been advised by Mr. C. Luna, President of BRT, Mr. H. E. Gilbert, President of BLF&E, and Mr. C. J. McPhail, Assistant General Manager of the carrier, in answer to our letter addressed jointly to your respective carrier and organizations, under date of January 29, 1963, that the carrier and organizations have declined, in writing, to arbitrate the questions in our Case No. A-6755.

Your attention is therefore directed to the last clause in Section 5, First (b) of the Railway Labor Act, as amended, reading as follows:

"If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under Section 10 of this Act, no

change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose."

It is the judgment of our Board that all practical methods provided in the Railway Labor Act for our adjusting the dispute have been exhausted, without effecting a settlement.

In these circumstances, notice is hereby served in behalf of the Board that its services (except as provided in Section 5, Third, and in Section 10 of the law) have this day been terminated under the provisions of the Railway Labor Act.

We are sending to Messrs. Gilbert and Luna a copy of Mr. McPhail's letter dated February 8, 1963, to Messrs. McPhail and Luna a copy of Mr. Gilbert's letter dated February 21, 1963, and to Messrs. McPhail and Gilbert a copy of Mr. Luna's letter dated February 11, 1963.

By order of the National Mediation Board.

Very truly yours,

[Signed]
E. C. THOMPSON
Executive Secretary

Defendants' Trial Exhibits

Letter, McPhail to General Chairmen, 1/24/66 (Def. Ex. VV)

THE DETRIOT AND TOLEDO SHORE LINE RAILROAD COMPANY
131 West Lafayette Avenue
Detroit, Michigan 48226

C. J. McPHAIL
General Manager

January 24, 1966
File: 00028

Mr. F. L. Rancich, General Chairman
Brotherhood of Locomotive Firemen & Enginemen
2022 Brussels Street
Toledo, Ohio 43613

Mr. Wm. Upham, General Chairman
Brotherhood of Railroad Trainmen
2523 Luddington Drive
Toledo, Ohio 43615

Mr. John Wulf, General Chairman
Order of Railway Conductors & Brakemen
2025 West Territorial Road
Battle Creek, Michigan

Gentlemen:

You may recall, a few years' ago each of your respective organizations were requested to participate in an inspection of facilities at our Trenton Freight Office in an effort to reach an understanding as to the welfare facilities necessary for the establishment of Trenton, Michigan as an outlying terminal for road crews. As a result of the serving of Section Six Notices under the Railway Labor Act, subsequent negotiations were conducted and terminated by the National Mediation Board because of failure of the parties to agree and because the carrier indicated to the Board it did not desire at that time to establish an outlying assignment at Trenton.

Instead, however, the carrier did establish outlying assignment at Dearoad, including a work train in September

1963, which subsequently became the basis of formal protest by the BofLF&E, progressed to Special Board of Adjustment No. 375, whereupon the Board issued its Award No. 21 in Case No. 21, dated November 30, 1965, stating: "There is nothing in the rules of agreement which precludes this carrier from establishing an outside assignment."

Accordingly, therefore, it is our intention to construct welfare facilities at our Trenton Freight Office to accommodate train and engine crews at that location. However, before doing so, it is felt that all of the parties should be in agreement, if possible, as to the accommodations necessary and you are, therefore, invited to participate in such inspection at the Trenton Station at 10 A.M., Thursday, February 3, 1966.

Yours truly,

/s/ C. J. McPhail

DECISION OF DISTRICT COURT
(October 7, 1966)

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO, WESTERN DIVISION

No. C 66-207

THE DETROIT AND TOLEDO SHORE LINE RAILROAD COMPANY, a corporation, *Plaintiff*,

vs.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, et al., etc., *Defendants*.

DECISION OF THE COURT

[Transcript, October 7, 1966.]

[2] Young, J.

Gentlemen, I have been considering this matter, the arguments of counsel as well as the various authorities that have been cited, and those citations I have explored for myself. The Court has come to some conclusions which I think should be dispositive of the matter.

Actually, we have two separate cases here before us. This was pointed out in argument and is emphasized by the fact that there are two separate Answers filed. One of the Answers has with it a Counterclaim or Cross-Petition.

So that I am going to consider my disposition of the case as involving two separate matters which will require separate disposition.

The first of the two matters is the Complaint with respect to the actions of the Brotherhood of Railroad Trainmen; at least that is the one that I am going to consider first.

[3] The problem there, of course, is raised by the prayer of the Complaint for an Injunction restraining the Brotherhood from an alleged threat to strike over a dispute that was precipitated by a bulletin posted by the plaintiff on

September 19th of this year providing that certain work assignments were going to have their terminal at the Edison Yard at Trenton, Michigan.

While there are apparently some differences between these two locations, it is too trivial to give any consideration to.

The problem here is simply another facet, it seems to the Court, of a long-standing dispute that has occurred between the parties, starting way back in 1961, or perhaps even before that.

It is argued that the 1961 matter is all over and done with and that the current dispute is an entirely new one. It is difficult for me to accept that interepretation of the facts that are on the record in this case.

The problem here, as the Court sees it, is that the plaintiff's claimed right to establish terminals wherever it wants to establish them leaves gaps in the agreements between the plaintiff and the defendant Brotherhood, because the agreement actually only sets up rates of pay and [4] working conditions for operations out of one main terminal.

So that we have, in effect, a situation where there is no agreement between the parties which could determine the difficulties between them.

When we come to consider that dispute in the light of the applicable law, we run into the difficulty that on such matters—that is, matters where there is no agreement between the parties and an agreement has to be negotiated—the Norris-LaGuardia Act and the Railway Labor Act do not seem to contemplate that the Court only has jurisdiction to interfere with other procedures used to resolve those difficulties.

Sometimes the language is used "major disputes and minor disputes," and while the Court may intervene in minor disputes to see that the provisions of the law are carried out, the Court may not intervene when there is a major dispute between the parties. That appears clearly to me to be the situation here, that there is, and for a long time there has been, a major dispute between these parties.

The dispute has flared up and been in abeyance from time to time, depending on the actions that were taken by the

parties on one side or the other to exacerbate the underlying difficulties, but it never has [5] been resolved in the way disputes are supposed to be resolved by the parties' rights under the law to self-help, and this Court has come to the conclusion that that being the case here, it has no jurisdiction to grant the relief prayed for in the plaintiff's Complaint.

Insofar as the Complaint involves a dispute with the Trainmen, it will be dismissed.

The situation with respect to the Complaint against the Brotherhood of Firemen and Enginemen presents a considerably different situation, a different problem.

I was unable to find from the evidence before me that the Brotherhood of Firemen and Enginemen had made any threat to strike. What they had done, apparently some time ago, in the spring of this year, was to make a so-called Section VI complaint to the National Mediation Board. That was duly docketed and a number was assigned to it; as I recall, it was numbered A7839. That matter is now pending the appointment of a mediator.

Under those circumstances, I don't see how a court could have any jurisdiction to grant relief to the plaintiff on their Complaint for an Injunction.

In the first place, if the processes of [6] the law have not yet been exhausted, there would be considerable doubt of the Court's jurisdiction. In the second place, if there really isn't any threat, then there is nothing for the Court to enjoin.

So that, again, as to the plaintiff's Complaint against the Brotherhood of Firemen and Enginemen, the Court is constrained to the view that the Complaint must be dismissed.

However, that does not dispose of all the issues that are raised in that matter, because the Brotherhood, in addition to its Answer which seeks the dismissal of the Complaint, has filed a Counterclaim seeking positive relief against the railroad on their behalf.

Their contention is that, having commenced proceedings under the Railway Labor Act, the provisions of the Act require that the matter should remain in status quo until all those procedures have been terminated, and for thirty days thereafter neither party has the right: (a) the rail-

road to change wages or working conditions, or (b) the union to strike.

The railroad's contention, the plaintiff's contention, in response to that is that this particular matter, that of establishing a terminal at Trenton or the [7] Edison Yard, is not a condition of employment in which the law requires that the status quo be maintained.

There doesn't appear to be any case law that precisely covers that situation, certainly not as applying to the facts in this case.

The plaintiff relies upon a statement in the report of the Labor Board about the matter, but that statement, when taken in context, is based on reading language into the statute which does not appear in the words of the statute itself.

So that this Court apparently has got to take a pioneering position and establish a rule; whether it be a precedent or whether it will stand, there is no way of telling.

But it seems to me that when we look at this thing as a whole and examine the history of it, as shown by the evidence in the record, the question of establishing this terminal at Trenton—while it is arguable, and might even be said to be conceded that the plaintiff had a right to establish terminals wherever it wants to—yet again, when we go back to the contract there isn't anything providing for the working conditions and rates of pay and things of that nature at those other [8] terminals.

So the Court has come to the conclusion that if it were to hold that the plaintiff had a right to go ahead and start doing the things that it proposed in its Bulletin of September 19, 1966 to do, that both as a legal and as a practical matter it would be changing the conditions of employment, because some men would have to be working out of that Yard. They would have to get there the best way they could, or they would have to move from where they now live if they didn't want to commute 35 miles or so back and forth. Certainly where a man lives when he goes to work is one of the conditions of his employment, and, it seems to me, a rather major condition of employment.

So that I feel constrained to grant to the Brotherhood of Firemen and Enginemen the relief that they seek in their Counterclaim, and that is that until the processes which are established by statute for working out the dispute between them and the plaintiff have been completed that there should be no change in the practices and the conditions that for many, many, many years have governed the carrier's operation and the work of the members of the defendant unions under it.

I feel that the Court has no alternative [9] except to grant to the defendants the relief that they are seeking by their Counterclaim.

It appearing that the defendants are the prevailing parties under the disposition I have just expressed, I will require that the defendants draft Findings of Fact and Conclusions of Law which are expressive of the Findings and Conclusions so delivered orally by the Court. They should submit those within ten days to the plaintiff. The plaintiff may then have an additional ten days to offer, if they desire, their version of what they believe are proper Findings of Fact and Conclusions of Law.

Upon receiving the Conclusions of both parties, or if the plaintiff accepts those submitted by the defendants, upon receiving the Conclusions expressed by the defendants, the Court will then enter an Order upon the Findings and Conclusions.

[Certificate of Court Reporter omitted in printing.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Filed November 1, 1966)

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO, WESTERN DIVISION

No. C 66-207

THE DETROIT AND TOLEDO SHORE LINE RAILROAD COMPANY, a corporation, *Plaintiff*,

v.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, et al., *Defendants*.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to Rule 52(a), the court hereby enters the following findings of fact and conclusions of law which constitute the grounds for its previously announced decision herein.

FINDINGS OF FACT

1. Plaintiff is a Michigan corporation with its principal office in Detroit, Michigan, and is a common carrier by railroad engaging in interstate commerce. Plaintiff operates its trains over its line of railroad between Lang Yard in Toledo, Ohio, and Detroit, Michigan, and over the lines of other railroads to other points in the State of Michigan.

2. Defendant Brotherhood of Locomotive Firemen and Enginemen (sometimes hereinafter referred to as the "Firemen") is a voluntary unincorporated association and labor organization, and is the only authorized representative, for purposes of collective bargaining under the Railway Labor Act, of the crafts or classes of railway engineers, firemen and hostlers employed by plaintiff; defendant H. E. Gilbert is President of the Firemen; and defendant E. [illegible] Gensler is General Chairman of the Firemen on the property of plaintiff railroad.

3. Defendant Brotherhood of Railroad Trainmen (sometimes hereinafter referred to as the "Trainmen") is a vol-

untary unincorporated association and labor organization, and is the only authorized representative, for purposes of collective bargaining under the Railway Labor Act, of the crafts or classes of trainmen and yardmen employed by plaintiff; defendant Charles Luna is President of the Trainmen; and defendant William Upham is General Chairman of the Trainmen on the property of plaintiff railroad.

4. At all times material hereto each of said Brotherhood defendants has been a party to separate collective bargaining agreements with plaintiff governing rates of pay, rules and working conditions of the separate crafts or classes of employees represented as aforesaid.

5. For many years prior to 1961, Lang Yard in Toledo, Ohio, was the terminal point, for train and engine crews going on and off duty, from which plaintiff operated to perform switching service for the Monsanto Chemical Company plant at Trenton, Michigan, where no terminal point had previously been established or operated by plaintiff. Under date of February 21, 1961, plaintiff advised defendant Brotherhoods of its intention to establish such a terminal point at Edison Station, in Trenton, Michigan, and inquired as to the facilities that would be required for employees going on and off duty at that point.

6. Under date of April 28, 1961, defendant Brotherhoods joined in serving on plaintiff, pursuant to Section 6 of the Railway Labor Act, a notice seeking amendment of existing collective bargaining agreements so as to cover changed working conditions of employees affected by the proposed establishment of a new terminal point. This notice was implemented by written proposals for specific benefits for such employees served on plaintiff under date of June 8, 1961.

7. Negotiations on said notice and proposals, and mediation thereon under the auspices of the National Mediation Board, failed to result in any agreement of the parties, and under date of January 1, 1963, said Board advised the parties, including plaintiff, of the failure of its mediatory efforts, and in accordance with Section 5, First, of the Railway Labor Act, requested the parties to submit the controversy to arbitration. All parties having declined arbitration, said Board, under date of March 4, 1963, notified the

parties that, except as provided in Section 5, Third, and in Section 10 of the Act, the Board's services had that day been terminated. On April 3, 1963, said Board notified the parties of the closing of its file in the matter, which it had docketed as National Mediation Board Case No. A-6755. At the hearing herein, it was conceded by plaintiff that at that stage all of the provisions of the Railway Labor Act governing the handling and processing of the major dispute initiated by defendants' Section 6 notice of April 28, 1961, had been exhausted, and that employees of plaintiff represented by defendant Brotherhoods were at that time legally free to strike.

8. Plaintiff's rejection of arbitration of said dispute had been coupled with a representation by it that its plans to establish a terminal point at Edison Station, Trenton, Michigan, had been abandoned, and that the dispute was therefore moot; and for some time no further action in connection with such dispute was taken by plaintiff or defendants. On December 16, 1965, a new written proposal for an agreement establishing conditions to be observed in establishment of a terminal point at Trenton (Edison Station) was given plaintiff by the Trainmen, which, though embodying conditions differing in part, at least, from those contained in the June 8, 1961, proposal, related to the same basic major dispute. These proposals were rejected by plaintiff.

9. In the meantime, defendant Firemen had withdrawn their Section 6 notice of April 28, 1961, and invocation of the National Mediation Board's services in connection therewith, and on January 27, 1966, served a new Section 6 notice on plaintiff calling for amendment of the Firemen's collective bargaining agreement so as to establish Lang Yard, Toledo, Ohio, as the sole terminal point for plaintiff's operations. Negotiations on that proposal failed to result in agreement, and under date of June 17, 1966, the Firemen formally invoked the services of the National Mediation Board in connection therewith. Under date of June 28, 1966, plaintiff and the Firemen were advised by said Board that the dispute had been docketed as National Mediation Board Case No. A-7839, and as of the date of the hearing herein said matter was awaiting assignment of a mediator by the Board.

10. Under date of September 19, 1966, plaintiff posted a bulletin directed to its employees advising of the establishment of a new train assignment, to operate out of Edison Station, Trenton, Michigan, as its terminal point, to be effective September 26, 1966. On September 23, 1966, plaintiff submitted to the National Railroad Adjustment Board a purported dispute with the Trainmen as to plaintiff's right, under its agreement with the Trainmen, to unilaterally establish new terminal points. On the same day this suit was filed, seeking an injunction against an alleged threatened strike by both defendant Brotherhoods.

11. At the hearing herein plaintiff conceded that the case involves separate causes of action, based on completely different relevant facts, against the Trainmen defendants and the Firemen defendants. Each group of defendants filed separate answers, and that of the Firemen incorporated a counterclaim against plaintiff seeking to enjoin it from unilaterally establishing the proposed terminal point at Trenton pending exhaustion of the procedures of the Railway Labor Act in connection with the aforementioned dispute currently pending before the National Mediation Board as its Case No. A-7839.

Conclusions of Law

1. Plaintiff invokes the jurisdiction of this Court under the Judicial Code (28 U.S.C., Secs. 1331 and 1337), the Interstate Commerce Act (49 U.S.C., Secs. 1 et seq.), and the Railway Labor Act (45 U.S.C., Secs. 151 et seq.).

2. Plaintiff is a common carrier by railroad in interstate commerce, and is subject to the provisions of the Railway Labor Act.

3. As to both the Firemen and the Trainmen defendants, their respective disputes with plaintiff, though separate and distinct, are primarily concerned with the amendment of existing collective bargaining agreements, and as such are "major disputes" subject to handling in accordance with the provisions of Section 6 and Section 5 of the Railway Labor Act. (*Elgin, Joliet and Eastern R. Co.* v. *Burley*, 325 U.S. 711.)

4. Under said Act, after exhaustion of the machinery pro-

vided for the handling of such disputes, without agreement being reached, both parties become legally free to resort to self help, including the right of employees to strike and the right of the carrier to place in effect unilateral changes in rates of pay, rules and working conditions. (*Railroad Telegraphers* v. *Chicago and North Western Railroad Co.*, 362 U.S. 330; *Brotherhood of Locomotive Engineers* v. *B. & O. R.R. Co.*, 372 U.S. 284.) Pending exhaustion of such machinery, the "*status quo*" is to be maintained by both parties. (Railway Labor Act, Sec. 6 and Sec. 5; *Butte, Anaconda & Pac. Ry. Co.* v. *Brotherhood of L.F. & E.*, 168 F. Supp. 911, aff'd. 268 F. (2d) 54; *Baltimore & Ohio R. Co.* v. *United Railroad Wkrs., etc.*, 271 F. (2d) 87, 90.)

5. With respect to the Trainmen defendants, the current dispute is over working conditions to be agreed upon in connection with plaintiff's establishment of a new terminal point at Trenton, Michigan, and is the same basic major dispute that was handled through all of the procedures of the Railway Labor Act to the maturing of said defendants' admitted right to strike in 1963. There being no prohibition in said Act against the right of the Trainmen to strike, and the jurisdiction of the court to grant injunctive relief in such circumstances being withdrawn by the provisions of the Norris-LaGuardia Act (29 U.S.C., Sec. 101 et seq.), the Trainmen's right to strike to obtain agreement of plaintiff upon such conditions may not be enjoined. (See *General Committee, B.L.E.* v. *Missouri-K.-T. R. Co.*, 320 U.S. 323, 332-333; *Missouri-Illinois R. Co.* v. *Order of Railway Conductors*, 322 F. (2d) 793; *Pan American World Air.* v. *Flight Eng. Intern. Assoc.*, 306 F. (2d) 840; and cases cited above.)

6. Plaintiff's submission to the National Railroad Adjustment Board, coincidentally with the filing of this action, of a purported dispute with the Trainmen over its right to unilaterally establish a new terminal at Trenton, Michigan, by its terms does not deal with the establishment, by contract, of new working conditions at Trenton; and there is no evidence on the record herein to support the existence of any such contract interpretation dispute with the trainmen as that described in plaintiff's submission to said Adjustment Board. The jurisdiction of the National Railroad Adjustment Board does not extend to major disputes, such

as that here involved, relating to the amendment of provisions of existing agreements. (*Elgin, Joliet and Eastern R. Co.* v. *Burley, supra; General Committee, B.L.E.* v. *Missouri-K.-T. R. Co., supra.*)

7. With respect to plaintiff's cause of action against the Firemen defendants, the court finds that plaintiff, having failed to comply with the *status quo* requirements of Sections 6 and 5 of the Railway Labor Act, with reference to handling of major disputes, is barred by the provisions of the Norris-LaGuardia Act, and particularly Section 8 thereof (29 U.S.C. Sec. 108) from obtaining any injunctive relief.

8. With respect to the counterclaim of the Firemen defendants against plaintiff, the court finds that in instituting Trenton, Michigan, as a new terminal point on September 26, 1966, pursuant to its bulletin of September 19, 1966, plaintiff effected a change in rates of pay, rules and working conditions, and established practices in effect prior to the time the dispute arose, which were the subject of the pending National Mediation Board Case No. A-7839, in violation of the *status quo* provisions of Section 6 and Section 5 First (b) of the Railway Labor Act, and should be enjoined to desist and refrain from such violation pending exhaustion of the major disputes handling procedures of said Act. It is well established that the court has jurisdiction to grant injunctive relief "to compel compliance with positive mandates of the Railway Labor Act". (*Graham* v. *Brotherhood of Locomotive Firemen and Enginemen*, 338 U.S. 232, 237.)

9. In view of the foregoing findings and conclusions, an order will be entered dismissing plaintiff's action for injunction against defendants, and, on the Firemen defendant's counterclaim, enjoining and restraining plaintiff from operating a terminal point at Edison Station, Trenton, Michigan, or any other terminal point not previously established, unless and until its pending major dispute with the Firemen, involved in National Mediation Board Case No. A-7839, has been fully handled to a conclusion, and the right of the parties thereto to resort to self-help has been matured,

by exhaustion of the procedures of Sections 6 and 5 of the Railway Labor Act, unless said dispute be earlier resolved by agreement between plaintiff and the Firemen.

DON J. YOUNG
United States District Judge

JUDGMENT AND DECREE OF DISTRICT COURT

(Filed November 15, 1966)

In the District Court of the United States for the Northern District of Ohio, Western Division

No. C 66-207

The Detroit and Toledo Shore Line Railroad Company, a corporation, *Plaintiff*,

v.

Brotherhood of Locomotive Firemen and Enginemen, et al., *Defendants*.

Judgment and Decree

This cause came on to be heard on October 6, 1966, by agreement of the parties, on the merits of plaintiff's complaint for injunction, the answer of defendants, and the counterclaim of defendants Brotherhood of Locomotive Firemen and Enginemen, H. E. Gilbert and E. F. Gensler for an injunction against plaintiff, and having been tried before the Court, argued by counsel, and considered by the Court, and the court having announced its opinion and having entered its findings of fact and conclusions of law in accordance therewith, now, therefore, it is ordered, adjudged and decreed that plaintiff shall not have any relief in this action, and that the same shall be and hereby is dismissed on the merits as to all defendants.

It is further ordered, adjudged and decreed that the counterclaim of said defendants Brotherhood of Locomotive Firemen and Enginemen, H. E. Gilbert and E. F. Gensler should be and hereby is sustained, and that plaintiff, its employees, agents or representatives, and anyone acting by, through or for it, or on its behalf, be and they hereby are enjoined and restrained from establishing or operating a terminal point at Edison Station, Trenton, Michigan, or any other terminal point not previously established, unless and until its pending major dispute with said

Brotherhood of Locomotive Firemen and Enginemen, involved in National Mediation Board Case No. A-7839, has been fully handled to a conclusion, and the right of the parties thereto to resort to self-help has been matured, by exhaustion of the procedures of Sections 6 and 5 of the Railway Labor Act, unless said dispute be earlier resolved by agreement between plaintiff and said Brotherhood.

DON J. YOUNG
United States District Judge

In conformity with Rule 77(d) F.R.C.P., please take notice that the following order or judgment was entered in this Court on Nov. 16, 1966.

C. B. WATKINS
Clerk

MOTION FOR NEW TRIAL

(Filed November 23, 1966)

[Title omitted in printing.]

Plaintiff respectfully moves the Court for an order vacating the judgment and decree heretofore entered in this cause on the 16th day of November, 1966 against plaintiff and in favor of defendants Brotherhood of Locomotive Firemen and Enginemen, H. E. Gilbert and E. F. Gensler and for a new trial pursuant to Rule 59 of the Federal Rules of Civil Procedure as to said defendants.

/s/ JOHN M. CURPHEY
/s/ ROBISON, CURPHEY & O'CONNELL
Attorneys for Plaintiff

Toledo, Ohio, November 22, 1966.

[Certificate of service omitted in printing.]

OPINION OF DISTRICT COURT *
(Filed May 12, 1967)

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO, WESTERN DIVISION

No. C 66-207

THE DETROIT & TOLEDO SHORE LINE RAILROAD COMPANY, *Plaintiff*,

vs.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, et al., *Defendants*.

OPINION

YOUNG, J.:

This cause arises under various provisions of the Railway Labor Act. 45 U.S.C. §§ 151 et. seq. Plaintiff sued the Brotherhood of Railroad Trainmen (hereinafter referred to as the Trainmen), the Brotherhood of Locomotive Firemen and Enginemen (hereinafter referred to as the Firemen), and their respective officers for an order restraining them from striking. The Firemen counterclaimed for an injunction to prevent the plaintiff from violating the status quo provisions of the Act by unilaterally establishing a new terminal point, thereby changing the place where the employees would be required to go on and off duty. The action came on to be heard on October 7, 1966, and testimony and argument were heard at that time. This Court rendered an oral decision in which it refused to grant the injunction against the Unions, while finding for the Firemen on their counterclaim. On November 1, 1966, the findings of fact and conclusions of law of the Court were filed. Plaintiff has now moved for an order vacating the judgment with respect to the Firemen, and for a new

* Reported at 267 F. Supp. 572.

trial pursuant to Rule 59 of the Federal Rules of Civil Procedure.

Since rather complete findings of fact have already been made, only a short summary of the facts will be repeated here. For many years Lang Yard in Toledo, Ohio has been the terminal point for train and engine crews going on and off duty, and from which switching services for the Monsanto Chemical plant at Trenton, Michigan was performed. On February 21, 1961 the railroad notified both unions of its intention to establish a new terminal point at Edison Station in Trenton, Michigan. The unions thereafter joined in seeking an amendment of the collective bargaining agreements to cover the changed working conditions pursuant to 45 U.S.C. § 156 by giving what is known as a section 6 notice. The services of the National Mediation Board were invoked but the parties failed to reach an agreement and declined arbitration. It is agreed that at this point the procedures with respect to the handling of the section 6 notice had been exhausted, and both the unions and the company were free to resort to self-help. Thereafter, certain other steps were taken by the Company and the Trainmen but this Court found that these related to the same basic dispute. This being the case, it was the Court's ruling that the dispute was a "major dispute" and that the Court therefore had no jurisdiction to enter an injunction against a strike by the Trainmen because of the Norris-LaGuardia Act, 29 U.S.C. § 101 et seq. That determination is not an issue here since the plaintiff has asked for an order vacating the judgment only with respect to the Firemen.

The facts particularly relevant to the present motion are that on January 27, 1966, the Firemen served a new section 6 notice on the plaintiff and that this time instead of seeking amendments to the bargaining agreement to cover the changed working conditions caused by the establishment of the new terminal point, sought to amend the agreement to establish Lang Yard as the sole terminal point for plaintiff's operations. The services of the National Mediation Board were again invoked and as of the date of the hearing, the matter was awaiting assignment of a mediator.

On September 19, 1966, plaintiff posted a bulletin advis-

ing the employees that Edison Station would be the new terminal point. This would mean that the employees would go on and off duty in Trenton, Michigan, some 30 to 40 miles north of Toledo where they had previously been based.

It was the holding of this Court that the unilateral action by the Company in posting the bulletin changing the terminal point after the services of the Mediation Board had been requested, violated the status quo provisions of sections 5 and 6 of the Act, providing that working conditions shall not be altered by the carrier until the controversy has been finally acted upon by the Board and for 30 days thereafter. The plaintiff's petition was therefore denied with respect to the Firemen, and plaintiff was enjoined from operating a terminal point at Edison Station until the exhaustion of the procedures of the Act. It is this holding which is disputed by the present motion.

It is unnecessary in this case to discuss in detail the "major" and "minor" dispute dichotomy in the Railway Labor Act. Suffice to say that if the dispute is termed major, either party may initiate the procedures of the Act by the service of a notice to change the contract pursuant to section 6.[1] If settlement cannot be reached in conference, the matter is referred to mediation under the auspices of the National Mediation Board. 45 U.S.C. § 155 (1964). The procedure for handling major disputes is designed to assist the parties in reaching agreement, and there is no authority to decide the dispute for the parties unless they agree to submit to arbitration.

After the parties have exhausted the procedures of the Act, they are free to resort to self-help and the courts may not enjoin a strike by the union nor a unilateral change in rates of pay, rules and working conditions by the carrier. *Brotherhood of Locomotive Engineers* v. *Baltimore & O.R.R.*, 372 U.S. 284 (1963); *Order of R.R. Telegraphers* v. *Chicago & N.W. Ry.*, 362 U.S. 330 (1960). However, pending exhaustion of such machinery, the parties are required to maintain the status quo. Thus, while the parties are in the process of exhausting the proceedings described

[1] 45 U.S.C. § 156 (1964).

above, the railroad may not unilaterally change the rates of pay, rules or working conditions and a court may enjoin such action. 45 U.S.C. §§ 155, 156 (1964); *United Industrial Workers of Seafarers* v. *Board of Trustees,* 368 F.2d 412 (5th Cir. 1966).

Plaintiff argues that the present controversy is neither a major nor a minor dispute but rather that it involves a matter of management prerogative.

For the procedures of the Railway Labor Act to be applicable there must first be a "labor dispute." Thus, for example, if management decided to install new machinery which did not in any way affect the terms or conditions of employment nor violate the collective bargaining agreement, it could do so without prior consultation with the union. If the union takes strike action concerning a nonbargainable matter, a court may issue a strike injunction because the Norris-LaGuardia Act, 29 U.S.C. §§ 101-115, preventing injunctions in "labor disputes" is not applicable. See *Chicago & N.W. Ry.* v. *Order of R.R. Telegraphers,* 264 F.2d 254, 260 (7th Cir. 1959), *rev'd on other grounds,* 362 U.S. 330 (1960).

The Supreme Court case of *Order of R.R. Telegraphers* v. *Chicago & N.W. Ry.,* 362 U.S. 330 (1960) involved facts which were substantially similar to the case at bar. In that case the railroad filed petitions with the public utility commissions in several of the states in which it operated asking permission to eliminate certain of its railroad stations. Recognizing that the plan would result in a loss of jobs, the union gave a section 6 notice to amend the bargaining agreement to state that no position could be abolished or discontinued except by agreement between the carrier and the organization. The Court held that the case grew out of a "labor dispute" and that by reason of the Norris-LaGuardia Act, the district court was without authority to enjoin the strike.

The Norris-LaGuardia Act defines a labor dispute as follows:

> "any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining,

changing, or seeking to arrange terms or conditions of employment. . . ."[2]

The Court said that the controversy clearly involved an effort to change the terms of an existing agreement, and that that term related to a condition of employment. Furthermore, the trend has been to broaden, not narrow the scope of subjects about which workers and railroads may bargain collectively. The Court finally noted that it is "too late now to argue that employees can have no collective voice to influence railroads to act in a way that will preserve the interests of the employees. . . ."[3]

Plaintiff attempts to distinguish the *Railroad Telegraphers* case by pointing out that the union there only objected to the abolition of jobs, and did not seek a veto over the carrier's right to determine the location of stations, while in the present case the Firemen seek to amend the agreement to make Lang Yard in Toledo the sole terminal point. The proposed rule actually seeks to establish that all crewmen will report to duty and go off duty at Lang Yard and not 35 miles north of Toledo. Certainly this is a proper subject for bargaining. The controversy concerns the terms of a proposed change in the collective bargaining agreement, and those terms relate to a condition of employment.

Plaintiff argues that *Brotherhood of R. R. Trainmen* v. *New York Cent. R. R.*, 246 F.2d 114 (6th Cir.) *cert denied* 355 U.S. 877 (1957) is controlling in this circuit. This Court believes, however, that that case was overruled by the *Railroad Telegraphers* case, and that the present controversy is a labor dispute not involving a matter solely within the discretion of management.

The second contention of the railroad is that even assuming we are dealing with a labor dispute, and that it is a "major dispute," its own action in establishing a terminal at Trenton prior to the termination of mediation with respect to the Firemen's 1966 notice did not violate the status quo provisions of sections 5 and 6 of the Act. The position of plaintiff is that its contract with the Firemen does not

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[2] 29 U.S.C. § 113(e).

[3] 362 U.S. 330, 339 (1960).

prohibit the establishment of new terminals for road service assignments, and that the status quo requirements of section 6 prohibit only changes in rates of pay, rules, or working conditions fixed by the parties' collective bargaining agreement. In other words, section 6 applies only when the proposed change in the agreement directly conflicts with a provision of the present contract. In support of this contention plaintiff cites a report of the National Mediation Board which reads in part as follows:

> "Section 6 states that where notice of intended change in an agreement has been given, rates of pay, rules, and working conditions *as expressed in the agreement* shall not be altered by the carrier until the controversy has been finally acted upon in accordance with specified procedures. Positively stated, section 6 is intended to maintain the contract as it existed between the parties until the provisions of the act have been complied with."[4] (Emphasis added.)

But the phrase "as expressed in the agreement" does not appear in section 6 of the Act, and this language appears to have been added by the Board. This Court does not think that such a limitation on the application of the status quo requirements is sound. The general scheme of the statute indicates that the purpose of the status quo provision is to aid the National Mediation Board in its function of helping the parties to reach an agreement. If the carrier can unilaterally change the working conditions of its employees while such conditions are the subject of mediation efforts by the Board, the work of the Board would be greatly hampered. Thus, it would appear that whenever the services of the Board have been invoked, its jurisdiction should be protected by the application of the provisions of section 6 even if the particular condition is not fixed by the existing agreement. There is no reason why the status quo provisions should not apply whenever the Board is mediating a dispute.

Furthermore, the limitation which the plaintiff places on

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[4] Thirty-First Annual Report of the National Mediation Board 25 (1965).

the application of the status quo provision is unsupported by case law. In *Williams* v. *Jacksonville Terminal,* 315 U.S. 386 (1942) the Court did state that the prohibitions of section 6 against changes in wages and working conditions pending bargaining are aimed at "preventing changes in conditions previously fixed by collective bargaining agreements."[5] However, the facts in that case were not even remotely analogous to the present situation, and the legal issues were different. There had been no previous collective bargaining agreement and there was no history of bargaining between the terminal and certain of its employees called "red caps." However, on October 11, 1938 the red caps notified the terminal that they had selected a union to represent them. The union representative then asked for a conference for the purpose of negotiating a collective bargaining agreement. But no section 6 notice was ever given because there was no existing agreement to amend. The carrier thereafter delivered to each red cap a letter stating that his weekly wage in the future would be the difference between the minimum wage set by the newly enacted Fair Labor Standards Act and the amount of tips received by him each week. An agreement was subsequently reached with regard to working conditions and hours but it omitted any reference to wages. The union representative then sued the terminal for wages due to the red caps under the Fair Labor Standards Act. The union contended among other things that the railroad could not apply the tips to the minimum wage figure because to do so violated the status quo provisions of the Railway Labor Act. The Court held that section 6 did not apply. This result is quite logical because section 6 applies only to intended changes in collective bargaining agreements and there was no agreement in existence to change. The decision of the Court, however, is not relevant to the present controversy, because the Firemen and the plaintiff have an agreement in effect and a section 6 notice has been given proposing that it be changed. The Board's services have therefore properly been invoked, and its jurisdiction to mediate should be protected.

The case of *Norfolk & Portsmouth Belt Line R.R.* v.

[5] 315 U.S. 386, 402-403 (1942).

Brotherhood of R.R. Trainmen, 248 F. 2d 34 (4th Cir.) cert. denied, 355 U.S. 914 (1957), is also not in point. The Court used language which supports plaintiff's contention but it is dictum, since the final determination was that the controversy was a minor dispute.

Thus, the language which the Board read into the Act in its report cited above is supported neither by sound reasoning nor by case law. Therefore, this Court will not limit the application of the status quo provisions which are clearly set forth in section 6.

The plaintiff's motion for an order vacating the judgment of this Court entered on November 16, 1966 and for a new trial will therefore be denied.

DON J. YOUNG
United States District Judge

Toledo, Ohio.

ORDER OF DISTRICT COURT
(Filed May 12, 1967)

In the United States District Court for the Northern District of Ohio, Western Division

No. C 66-207

The Detroit & Toledo Shore Line Railroad Company, *Plaintiff*,

vs.

Brotherhood of Locomotive Firemen and Enginemen, et al., *Defendants*.

Order

For the reasons set forth in the accompanying opinion, it is now

Ordered that the plaintiff's motion for an order vacating the judgment of this Court entered on November 16, 1966 and for a new trial will be denied.

Don J. Young
United States District Judge

Toledo, Ohio.

In conformity with Rule 77(d) F. R. C. P., please take notice that the following order or judgment was entered in this Court on May 12, 1967.

C. B. Watkins,
Clerk

OPINION OF COURT OF APPEALS *
(Filed October 7, 1968)

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 18059

THE DETROIT AND TOLEDO SHORE LINE RAILROAD COMPANY,
Plaintiff-Appellant,

v.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN,
Defendant-Appellee.

Decided October 7, 1968.

APPEAL from the United States District Court,
Northern District of Ohio

Before: McCREE and COMBS, Circuit Judges, and CECIL, Senior Circuit Judge.

COMBS, Circuit Judge. The Detroit and Toledo Shore Line Railroad [Shore Line] brought suit to enjoin a threatened strike by the Brotherhood of Locomotive Firemen and Enginemen [BLF&E]. The BLF&E counterclaimed, seeking to enjoin a change in work assignments proposed by Shore Line. The District Court dismissed Shore Line's complaint and issued the injunction sought by BLF&E, 267 F.Supp. 572 (1967). This appeal followed.

Shore Line's main line of railroad runs from Toledo, Ohio to Detroit, Michigan. Until 1961, all work assignments for Shore Line's crews started and ended at Lang Yard in Toledo. An increasing volume of business in Trenton, Michigan caused Shore Line to consider the establishment of a terminal there. A major difficulty in this regard stemmed from the fact that all of its work assignments for many years had originated at Lang Yard, thirty-three miles away.

* Reported at 401 F. 2d 368.

Thus, to service a train starting and ending its run in Trenton, it was necessary to transport the work crews to and from Lang Yard each day.

In 1961, Shore Line notified three unions representing its employees, including BLF&E, that certain designated work assignments would henceforth originate in Trenton. The unions served notice on Shore Line, pursuant to Section 6 of the Railway Labor Act, proposing certain special working conditions for employees who would operate out of Trenton. Conferences on these notices brought no agreement and the matter was referred to the National Mediation Board. While the case was pending before the Board, Shore Line established two new work assignments to originate in Dearoad, Michigan, eleven miles north of Trenton. The crews operating out of Dearoad were driven to Trenton by a taxicab service operated by Shore Line.

When the Dearoad work assignments were announced, the BLF&E withdrew from the Mediation Board proceedings and, before a Special Board of Adjustment, challenged Shore Line's right to establish the new work assignments.[1] It was asserted that these assignments were contrary to the collective bargaining agreement between the parties. On November 30, 1965, the Special Board ruled that the Shore Line-BLF&E bargaining agreement did not prohibit the establishment of outlying work assignments.

Shortly after the action by the Special Board, Shore Line revived its plan to originate work assignments out of Trenton. Learning this, BLF&E served a Section 6 notice on Shore Line, proposing an amendment to the existing collective bargaining agreement to the effect that "all road service runs and/or assignments will originate and terminate at Lang Yard. . . ." The parties, being unable to agree, submitted the matter to the National Mediation Board. Notwithstanding this action, Shore Line posted notices announcing two work assignments to originate at Trenton. The BLF&E threatened to strike and this action was initiated.

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[1] The BLF&E decided to treat the controversy as a "minor dispute." Under Section 3 of the Railway Labor Act, such disputes are settled by an Adjustment Board whose interpretation of the contract is binding on the parties. See *Elgin, Joliet & Eastern Ry.* v. *Burley*, 325 U.S. 711 (1945).

The District Court enjoined Shore Line from "establishing or operating a terminal point at Edison Station, Trenton, Michigan, or any other terminal point not previouly established. . . ." The injunction was grounded on the Section 6 requirement that, following issuance of a notice under that section or the National Mediation Board's proffer of services, a carrier may not alter "rates of pay, rules, or working conditions" until Section 6 procedures have been exhausted.

Shore Line asserts that the District Court's decision is erroneous for two reasons. First, it is contended that the status quo provision in Section 6 of the Act applies only to changes in "rates of pay, rules, or working conditions" which are embodied in the bargaining agreement, and that no terminal point is established in the bargaining agreement. We find this argument to be lacking in merit for the reasons stated in the opinion of the District Judge.

Second, it is argued by Shore Line that the establishment of a railway terminal is not bargainable because it is a managerial prerogative. This argument would have great force if the District Court's judgment prevented the company from constructing physical facilities known as a "terminal" or from using such facilities as a terminal. But such is not the case. The controversy here is focused on where work assignments will commence and end—the place where employees will report on and off duty. We find nothing in the correspondence between the parties, in the testimony of the witnesses, or in the opinion of the District Judge which would indicate that the judgment of the District Court should be given a broader meaning.

The question before the District Court was whether the place where employees for many years have originated and terminated their work days is a "working condition" which can be changed unilaterally by the employer without exhausting the bargaining procedures required by Section 6 of the Act. We note that it is stated by the District Judge in his opinion: "The proposed rule actually seeks to establish that all crewmen will report to duty at Lang Yard and not 35 miles north of Toledo."

It was held by the District Judge that this is a proper subject for bargaining and, as we construe the judgment, that is all that was held. We agree with the reasoning of the District Judge and with his conclusion.

Judgment affirmed.

JUDGMENT OF COURT OF APPEALS
(Filed October 7, 1968)

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 18,059

THE DETROIT AND TOLEDO SHORE LINE RAILROAD COMPANY,
Plaintiff-Appellant,

vs.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, ET AL., *Defendants-Appellees.*

BEFORE: McCREE and COMBS, Circuit Judges and CECIL, Senior Circuit Judge.

JUDGMENT

APPEAL from the United States District Court for the Northern District of Ohio.

THIS CAUSE came on to be heard on the record from the United States District Court for the Northern District of Ohio and was arguel by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

It is further ordered that Defendants-Appellees recover from Plaintiff-Appellant the costs on appeal, as itemized below, and that execution therefor issue out of said District Court.

Entered by order of the Court.

CARL W. REUSS,
Clerk

Issued as Mandate:

Costs:

Filing fee ..... $

Printing ..... $

Total ..... $

ORDER GRANTING MOTION TO SUBSTITUTE
(Filed March 3, 1969)

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1968

No. 900

THE DETROIT AND TOLEDO SHORE LINE RAILROAD COMPANY,
Petitioner,

v.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN

UPON CONSIDERATION of the motion to substitute United Transportation Union in place of Brotherhood of Locomotive Firemen and Enginemen as the party respondent,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

March 3, 1969

Supreme Court of the United States

No. 900 ---- , *October Term, 19* 68

The Detroit and Toledo Shore Line Railroad Company,

Petitioner,

v.

United Transportation Union

ORDER ALLOWING CERTIORARI. Filed March 3 ---------- , 19 69.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth ---------- Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.